# [***82 FR 51814***](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5PX3-Y940-006W-80W8-00000-00&context=)

Vol. 82, No. 215, Wednesday, November 8, 2017

Notices

**Reporter**

82 FR 51814 \*

***Federal Register* > *2017* > *November* > *Wednesday, November 8, 2017* > *Notices* > *DEPARTMENT OF COMMERCE (DOC) -- International Trade Administration (ITA)***

**Title:** **Certain Softwood Lumber Products From Canada: Final Affirmative Countervailing Duty Determination, and Final Negative Determination of Critical Circumstances**

**Agency**

DEPARTMENT OF COMMERCE (DOC) > International Trade Administration (ITA) > Enforcement and Compliance

**Identifier:** **[C-122-858]**

**Synopsis**

**SUMMARY:** The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain softwood lumber products (softwood lumber) from Canada. The period of investigation is January 1, 2015, through December 31, 2015.

**Text**

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 26, 2017, the Department published the *Preliminary Determination of Critical Circumstances.* n1 On April 28, 2017, the Department published the *Preliminary Determination* in this countervailing duty (CVD) investigation, in which the Department preliminarily found that countervailable subsidies are being provided to producers and exporters of softwood lumber from Canada. n2 A summary of the events that have occurred since the Department published the *Preliminary Determination,* as well as a full discussion of the issues raised by parties **[\*51815]** for this final determination, may be found in the Issues and Decision Memorandum. n3 The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at [*http://access.trade.gov*](http://access.trade.gov)*,* and to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at [*http://enforcement.trade.gov/frn/*](http://enforcement.trade.gov/frn/)*.*

n1 *See Antidumping and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada: Preliminary Determinations of Critical Circumstances,* [*82 FR 19219*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5ND9-CD00-006W-826B-00000-00&context=) (April 26, 2017) (*Preliminary Determination of Critical Circumstances*).

n2 *See Certain Softwood Lumber Products from Canada: Preliminary Affirmative Countervailing Duty Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* [*82 FR 19657*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5NDS-03T0-006W-82D5-00000-00&context=) (April 28, 2017) and accompanying Preliminary Decision Memorandum (Preliminary Decision Memorandum) (collectively, *Preliminary Determination).*

n3 *See* Memorandum, "Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

**Scope of the Investigation**

The product covered by this investigation is softwood lumber from Canada. For a complete description of the scope of this investigation, *See* Appendix I.

**Scope Comments**

In accordance with the *Preliminary Determination,* Preliminary Scope Decision Memorandum, and ALB Decision Memorandum, n4 the Department set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* proposed exclusions from the scope). Certain interested parties commented on the scope of the investigation as it appeared in the *Preliminary Determination,* Preliminary Scope Decision Memorandum, and ALB Decision Memorandum. Therefore, the scope of this investigation has been modified for this final determination. For a summary of the product coverage comments and rebuttal responses submitted to the record for this final determination, and accompanying discussion and analysis of all comments timely received, *See* the Issues and Decision Memorandum and Final Scope Decision Memorandum. n5

n4 *See* Memorandum, "Certain Softwood Lumber Products from Canada: Scope Decision," dated June 23, 2017 (Preliminary Scope Decision Memorandum). In the Preliminary Scope Decision Memorandum, the Department preliminarily adopted certain exclusions from the scope of the antidumping duty (AD) and CVD investigations and stated its intention to consider expanded exclusionary language covering bed-frame components, and exclusionary language for crating ladder components, if submitted by interested parties. *See also* Memorandum, "Decision Memorandum for Exclusion of Certain Softwood Lumber Products Certified By the Atlantic Lumber Board in the Antidumping Duty and Countervailing Duty Investigations of Certain Softwood Lumber Products from Canada," dated June 23, 2017 (ALB Decision Memorandum), where the Department preliminarily excluded from the scope softwood lumber products certified by the Atlantic Lumber Board (ALB) as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in these three provinces.

n5 *See* Issues and Decision Memorandum; *see also* Memorandum, "Certain Softwood Lumber Products from Canada: Scope Decision," dated concurrently with, and hereby adopted by, this notice (Final Scope Decision Memorandum).

**Verification**

As provided in section 782(i) of the Tariff Act of 1930 (the Act), during June 2017, the Department conducted verification of the information submitted by the Government of British Columbia, Government of Alberta, Government of Ontario, Government of Quebec, Government of New Brunswick, Government of Nova Scotia, the respondent companies Canfor Corporation (Canfor), Resolute FP Canada Inc. (Resolute), Tolko Marketing and Sales Ltd. and Tolko Industries Ltd. (Tolko), and West Fraser Timber Co. Ltd. (West Fraser), and voluntary respondent J.D. Irving, Limited (JDIL) for use in the Department's final determination. n6 The Department used standard verification procedures, including an examination of original source documents provided by the respondents.

n6 *See* Memorandum to All Interested Parties titled "Countervailing Duty Investigation of Certain Softwood Lumber Products from Canada: Verification Schedule," dated May 12, 2017.

**Analysis of Subsidy Programs and Comments Received**

The subsidy programs under investigation and all issues raised in the case and rebuttal briefs that were submitted by parties in this investigation are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice as Appendix II.

**Changes Since the Preliminary Determination**

Based on the Department's analysis of the comments received and consideration of the verification reports, the Department made certain changes to the subsidy rate calculations for each of the respondents. For a discussion of the Department's changes, *See* the Issues and Decision Memorandum. As a result of these changes, the Department has also revised the "All-Others" rate calculated for the non-individually examined companies as discussed below.

**All-Others Rate**

In accordance with section 705(c)(1)(B)(i)(I) of the Act, the Department must determine an estimated all-others rate for all exporters and producers not individually examined. Pursuant to section 705(c)(5)(A) of the Act, this rate is normally an amount equal to the weighted average of the estimated subsidy rates established for those exporters and producers individually examined, excluding any zero and *de minimis* countervailable subsidy rates, and any rates based entirely under section 776 of the Act.

In this investigation, the Department calculated individual estimated countervailable subsidy rates for Canfor, JDIL, n7 Resolute, Tolko, and West Fraser, that are not zero, *de minimis,* or based entirely on facts otherwise available. Therefore, pursuant to section 705(c)(5)(A) of the Act, the Department calculated the all-others rate using a weighted-average of the individual estimated subsidy rates calculated for the examined respondents using each company's business proprietary data for the merchandise under consideration. n8

n7 *See* [*MacLean-Fogg Co. v. United States, 753 F.3d 1237 (Fed. Cir. 2014)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5CBP-YHH1-F04B-M02B-00000-00&context=) (holding that voluntary respondents are considered "individually investigated" for purposes of calculating the all-others rate). The Department accepted JDIL as a voluntary respondent in this investigation.

n8 *See* Memorandum to the File, "Calculation of the "All-Others" Rate in the Final Determination of the Countervailing Duty Investigation of Softwood Lumber Products from Canada" dated concurrently with this notice.

**Final Determination**

The Department determines that the following estimated countervailable subsidy rates exist:

| **Company** | **Subsidy** |
| --- | --- |
|  | **rate** |
|  | **(%)** |
| Canfor Corporation and its cross-owned affiliates(9M) | 13.24 |
| J.D. Irving, Limited and its cross-owned affiliates(10M) | 3.34 |
| Resolute FP Canada Inc. and its cross-owned affiliates(11M) | 14.70 |
| Tolko Marketing and Sales Ltd. and its cross-owned affiliates(12M) | 14.85 |
| West Fraser Mills Ltd. and its cross-owned affiliates(13M) | 18.19 |
| All-Others | 14.25 |

**Final Negative Determination of Critical Circumstances**

n9 The Department has found the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products, Ltd., and Canfor Wood Products Marketing, Ltd.

n10 The Department has found the following companies to be cross-owned with JDIL: Miramichi Timber Holdings Limited, The New Brunswick Railway Company, Rothesay Paper Holdings Ltd., St. George Pulp & Paper Limited, and Irving Paper Limited.

n11 The Department has found the following companies to be cross-owned with Resolute: Resolute Growth Canada Inc., Resolute Sales Inc., Abitibi-Bowater Canada Inc., Bowater Canadian Ltd., Resolute Forest Products Inc., Produits Forestiers Maurice S.E.C., and 9192-8515 Quebec Inc.

n12 The Department has found the following companies to be cross-owned with Tolko: Tolko Industries Ltd., and Meadow Lake OSB Limited Partnership.

n13 The Department has found the following companies to be cross-owned with West Fraser: West Fraser Timber Co. Ltd., West Fraser Alberta Holdings, Ltd., Blue Ridge Lumber Inc., Manning Forest Products, Ltd., Sunpine Inc., and Sundre Forest Products Inc.

In accordance with section 703(e) of the Act, the Department preliminarily found that critical circumstances existed with respect to JDIL and the non-individually examined companies receiving the "All-Others" rate in this investigation and did not exist with respect to the respondents Canfor, Resolute, Tolko, and West Fraser. The Department received comments concerning the preliminary affirmative determination of critical circumstances. For the final determination, the Department finds that, in accordance with 705(a)(2) of the Act, critical circumstances do not exist for all individually-examined respondents and the non-individually examined companies receiving the "All-Others" rate in this investigation. A discussion of the determination can be found in the Issues and Decision Memorandum.

**Suspension of Liquidation**

As a result of our *Preliminary Determination,* and pursuant to sections 703(d)(1)(B) and (2) of the Act, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of merchandise under consideration from Canada that were entered or withdrawn from warehouse, for consumption, on or after April 28, 2017, the date of publication of the **Federal Register** .

We preliminarily determined that critical circumstances existed with respect to entries of softwood lumber from Canada made by JDIL and the non-individually examined companies receiving the "All-Others" rate in this investigation. As a result, we instructed CBP to suspend liquidation of entries that were entered, or withdrawn from warehouse, for consumption on or after January 28, 2017, which is 90 days before the date of the publication of the **Federal Register** . At that time, we instructed CBP to collect cash deposits of estimated countervailing duties for such entries at the rates determined in the *Preliminary Determination.*

In accordance with section 703(d) of the Act, we later issued instructions to CBP to discontinue the suspension of liquidation for CVD purposes for subject merchandise entered, or withdrawn from warehouse, on or after August 26, 2017, but to continue the suspension of liquidation of all entries between January 28, 2017 (for JDIL and all-others) or April 28, 2017 (for the other individually examined respondents), and August 25, 2017, as appropriate.

Because we find critical circumstances do not exist for JDIL and the non-individually examined companies receiving the "All-Others" rate in this investigation, we will direct CBP to terminate the retroactive suspension of liquidation ordered at the *Preliminary Determination* and release any cash deposits that were required prior to April 28, 2017, consistent with section 705(c)(3) of the Act.

If the International Trade Commission (ITC) makes a final determination that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC issues a final affirmative injury determination, we will issue a CVD order, reinstate the suspension of liquidation under section 706(a) of the Act, and require a cash deposit of estimated CVDs for such entries of subject merchandise in the amounts indicated above.

**Exclusion of Certain Softwood Lumber Products Certified by the Atlantic Lumber Board (ALB)**

As noted in the scope of the investigation (Appendix I), the Department has excluded from the scope of the investigation softwood lumber products certified by the ALB as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island. We will instruct CBP to require that the ALB certificate be included with each entry and require that the ALB certificate of origin number be identified on each CBP Form 7501, for such entries to be excluded from the scope of the order, if issued. Further, if an order is issued, we will instruct CBP to refund cash deposits collected on any suspended entries between April 28, 2017 (for the other individually examined respondents), and August 25, 2017, as appropriate, that are accompanied by the ALB certificate.

**Disclosure**

The Department intends to disclose to interested parties its calculations and analysis performed in this final determination within five days of any public announcement in accordance with 19 CFR 351.224(b).

**ITC Notification**

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Enforcement and Compliance.

**Notification to Interested Parties**

This notice serves as a reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the ***regulations*** and the terms of an APO is a violation subject to sanction. **[\*51817]**

This determination and notice are issued and published pursuant to sections 705(d) and 777(i) of the Act.

Dated: November 1, 2017.

**Gary Taverman,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**Scope of the Investigation**

The merchandise covered by this investigation is softwood lumber, siding, flooring and certain other coniferous wood (softwood lumber products). The scope includes:

* Coniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters.

1. Coniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed.
2. Coniferous drilled and notched lumber and angle cut lumber.
3. Coniferous lumber stacked on edge and fastened together with nails, whether or not with plywood sheathing.
4. Components or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above.

Finished products are not covered by the scope of this investigation. For the purposes of this scope, finished products contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to this investigation at the time of importation. Such differentiation may, for example, be shown through marks of special adaptation as a particular product. The following products are illustrative of the type of merchandise that is considered "finished," for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

The following items are excluded from the scope of this investigation:

* Softwood lumber products certified by the Atlantic Lumber Board as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in Newfoundland and Labrador, Nova Scotia, or Prince Edward Island.

1. U.S.-origin lumber shipped to Canada for processing and imported into the United States if the processing occurring in Canada is limited to one or more of the following: (1) Kiln drying; (2) planing to create smooth-to-size board; or (3) sanding.
2. Box-spring frame kits if they contain the following wooden pieces--two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails must be radius-cut at both ends. The kits must be individually packaged and must contain the exact number of wooden components needed to make a particular box-spring frame, with no further processing required. None of the components exceeds 1" in actual thickness or 83" in length.
3. Radius-cut box-spring-frame components, not exceeding 1" in actual thickness or 83" in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantially cut so as to completely round one corner.

Softwood lumber product imports are generally entered under Chapter 44 of the Harmonized Tariff Schedule of the United States (HTSUS). This chapter of the HTSUS covers "Wood and articles of wood." Softwood lumber products that are subject to this investigation are currently classifiable under the following ten-digit HTSUS subheadings in Chapter 44:

4407.10.01.01; 4407.10.01.02; 4407.10.01.15; 4407.10.01.16; 4407.10.01.17; 4407.10.01.18; 4407.10.01.19; 4407.10.01.20; 4407.10.01.42; 4407.10.01.43; 4407.10.01.44; 4407.10.01.45; 4407.10.01.46; 4407.10.01.47; 4407.10.01.48; 4407.10.01.49; 4407.10.01.52; 4407.10.01.53; 4407.10.01.54; 4407.10.01.55; 4407.10.01.56; 4407.10.01.57; 4407.10.01.58; 4407.10.01.59; 4407.10.01.64; 4407.10.01.65; 4407.10.01.66; 4407.10.01.67; 4407.10.01.68; 4407.10.01.69; 4407.10.01.74; 4407.10.01.75; 4407.10.01.76; 4407.10.01.77; 4407.10.01.82; 4407.10.01.83; 4407.10.01.92; 4407.10.01.93; 4409.10.05.00; 4409.10.10.20; 4409.10.10.40; 4409.10.10.60; 4409.10.10.80; 4409.10.20.00; 4409.10.90.20; 4409.10.90.40; and 4418.99.10.00.

Subject merchandise as described above might be identified on entry documentation as stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts. Items so identified might be entered under the following ten-digit HTSUS subheadings in Chapter 44:

4415.20.40.00; 4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40; 4418.99.90.95; 4421.99.70.40; and 4421.99.97.80.

Although these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

**Appendix II**

**List of Topics Discussed in the Issues and Decision Memorandum**

Summary

Background

Case History

Period of Investigation

Scope of the Investigation

I. Scope Comments

Subsidies Valuation Information

A. Allocation Period

B. Attribution of Subsidies

C. Denominators

D. Loan Interest Rate Benchmarks and Discount Rates

Analysis of Programs

A. Programs Determined To Be Countervailable

B. Programs Determined To Be Tied to Non-Subject Merchandise

C. Programs Determined Not To Provide Countervailable Benefits During the POI

D. Programs Determined Not To Be Used During the POI

E. Program Determined To Be Not Countervailable

F. Programs Deferred Until a Subsequent Administrative Review

G. New Subsidy Allegations

Analysis of Comments

*General Issues*

Comment 1: Whether Critical Circumstances Exist

Comment 2: Whether the Department Should Consider Company-Specific Exclusion Requests

Comment 3: Whether the Department Has the Authority To Countervail Future Assistance

Comment 4: Whether the Department Should Countervail and Apply AFA to Certain Untimely Reported Programs by JDIL and Resolute

Comment 5: Whether the Department Properly Requested Respondent Interested Parties To Report "Other Assistance"

Comment 6: Whether the Department Should Defer Examination of Certain Programs

Comment 7: Whether the Department Should Make a Finding on the NSAs

Comment 8: Whether the Department Correctly Determined if Certain Programs are Specific

Comment 9: Whether the Department Erroneously Applied its Attribution ***Regulations***

Comment 10: Whether the Department Should Rely on Expert Reports

*General Stumpage Issues*

Comment 11: Whether the Provision of Stumpage Rights Is a Financial Contribution

Comment 12: Whether Evidence Establishes No Market Distortion and Tier-One Benchmarks Should Be Applied

Comment 13: Whether the Department Must Compare Average Benchmark Prices to Average Transaction Prices

Comment 14: Whether the Department Must Conduct a Pass-Through Analysis

Comment 15: Whether the Net Benefit Calculation for Stumpage for LTAR Is Correct

*Alberta Stumpage Issues*

Comment 16: Benchmarking Alberta

Comment 17: Whether the Department Should Use a U.S. Log Benchmark To Compare Respondents' Alberta Stumpage Purchases

*British Columbia Stumpage Issues*

Comment 18: Whether Crown Auctions in British Columbia Generate Valid Market Prices

Comment 19: Whether the Department Should Use Conversion Factors From the BC Dual Scale Study

Comment 20: Whether the Department Should Rely on Log Prices From **[\*51818]** Forest2Market Instead of WDNR Prices as a Benchmark To Compare Respondents' BC Stumpage Purchases

Comment 21: Whether U.S. PNW Log Prices Should Not Be Used as a Benchmark Because They Do Not Reflect Prevailing Market Conditions in British Columbia

Comment 22: Whether the Department Should Use a Timbermark-Specific Annual Average Stumpage Price

Comment 23: Whether the Department Should Consider BC Stumpage Prices on a "Stand as a Whole" Basis

Comment 24: Whether the Department Should Grant Cost Adjustments in British Columbia

Comment 25: Whether the Department Should Account for Differences in Grading Systems in British Columbia and the United States

Comment 26: Whether the Department Should Adjust for a Non-Contract Profit Rate

Comment 27: Whether the Department Should Adjust the U.S. Benchmark Price To Account for Tenure Security

*New Brunswick Stumpage Issues*

Comment 28: Whether Private Stumpage Prices in New Brunswick Should Be Used as Tier-One Benchmarks

Comment 29: Whether the Department Should Use the New Brunswick Survey as a Benchmark for Stumpage for LTAR

*Ontario Stumpage Issues*

Comment 30: Whether Stumpage for Ontario Crown Timber Was Subsidized During the Period of Investigation

Comment 31: Whether Ontario's Private Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark

Comment 32: Whether the Ontario Log Benchmark Relied on by the Department in *Lumber IV* Would Demonstrate That Ontario Crown Timber Is Not Subsidized

Comment 33: Whether Stumpage Charges Distort Ontario's Domestic Log Market and Whether a Log Price Benchmark Shows No Subsidy

Comment 34: Whether To Estimate Ontario's Crown Timber Prices With Quebec's Transposition Equation

*Quebec Stumpage Issues*

Comment 35: Whether the Quebec Stumpage Market Is Distorted

Comment 36: Whether the Department Made a Clerical Error in Its Calculation of the Quebec Stumpage Benefit That It Should Correct in Its Final Determination

Comment 37: Whether Resolute Pays ***Competitive*** Prices for Its Purchases of Non-TSG or Non-Tenured Timber

Comment 38: Whether the Department Should Account for the Premiums Resolute Pays Over Auction Prices in Quebec

*Nova Scotia Benchmark Issues*

Comment 39: Whether NS Private Stumpage Prices Can Serve as a Tier-One Benchmark

Comment 40: Whether the Nova Scotia Benchmark Is Comparable to the Provinces at Issue

Comment 41: Whether Nova Scotia's Private Stumpage Survey Data Are Flawed

Comment 42: Whether the Department Should Make Adjustments to the Nova Scotia Benchmark

Comment 43: Whether the Department Should Make Adjustments to Stumpage Rates in Alberta, Ontario, Quebec, and New Brunswick

*Log Export Restraint Issues*

Comment 44: Whether the Log Export Restraint in British Columbia Restrains Log Exports

Comment 45: Whether Log Export Restraints Impact the British Columbia Interior

Comment 46: Whether the Log Export Process in British Columbia Is a Financial Contribution

Comment 47: Whether the Constructed Benchmark for Log Export Restraints in the *Preliminary Determination* Was Correct

*Purchase of Goods for MTAR Issues*

Comment 48: Whether Electricity Is a Service and Therefore Whether the Purchase of Electricity by BC Hydro Is a Financial Contribution

Comment 49: Whether BC Hydro's Purchase of Electricity Is Tied to Electricity

Comment 50: Whether BC Hydro's EPA Program Is Specific

Comment 51: Which Benchmark Should the Department Use for the Purchase of Electricity for MTAR by BC Hydro

Comment 52: Whether the GOQ's Purchase of Electricity Is Specific

Comment 53: Whether Resolute's Electricity Sales Are Tied to Non-Subject Merchandise

Comment 54: Whether the Department Should Use the Industrial L Rate as the Benchmark for the GOQ's Purchase of Electricity Under PAE 2011-01

Comment 55: Whether the Industrial L Rate Benchmark Was Improperly Calculated

*Grant Program Issues*

Comment 56: Whether the Canada-New Brunswick Job Grant Program Is Regionally Specific

Comment 57: Whether the Alberta Bioenergy Producer Credit Program Is Countervailable

Comment 58: Whether the Department Incorrectly Analyzed the BC Hydro Power Smart: Load Curtailment Program

Comment 59: Whether the Department Correctly Found That the Three BC Hydro Power Smart Programs Countervailed in the *Preliminary Determination* Are *De Jure* Specific

Comment 60: Whether Benefits Under the Load Displacement Component of the BC Hydro Power Smart Incentives Subprogram Were Tied to Non-Subject Merchandise

Comment 61: Whether the GNB's Reimbursement of Silviculture and License Management Expenses Is Countervailable

Comment 62: Whether the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund Are *De Facto* Specific

Comment 63: Whether the PCIP Is Countervailable

*Tax Program Issues*

Comment 64: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

Comment 65: Whether the Department Should Countervail the Federal and Provincial SR&ED Tax Credits That Are Purportedly Tied to Non-Subject Merchandise

Comment 66: Whether the Department Is Using the Correct Applicable Tax Rate for ACCA for Class 29 Assets

Comment 67: Whether the Department Should Use an Alternative Methodology for Calculating the Benefit of the ACCA for Class 29 Assets

Comment 68: Whether the ACCA for Class 29 Assets Program Is Specific

Comment 69: Whether the ACCA for Class 29 Assets Is a Tax Deferral

Comment 70: Whether the AJCTC Is Specific

Comment 71: Whether the Department Must Account for Gains and Losses in Tax Savings in the AITC Program

Comment 72: Whether the Benefit for the Atlantic Investment Tax Credit Should Be Adjusted

Comment 73: Whether the Alberta TEFU Marked Fuel Program Provides a Countervailable Subsidy

Comment 74: Whether the Coloured Fuel Program Evaluated in the *Preliminary Determination* Provides Countervailable Subsidies

Comment 75: Whether the GNB's Gasoline and Fuel Tax Exemptions and Refund Program Provides a Financial Contribution and Is Specific

Comment 76: Whether LIREPP Constitutes a Financial Contribution and Confers a Benefit on Irving Companies

Comment 77: Whether LIREPP Is Tied to Non-Subject Merchandise

Comment 78: Whether Credits for Road Construction Are a Countervailable Subsidy

Comment 79: Whether the Benefit of the Quebec Private Forest Tax Incentive Was Overstated

Comment 80: Whether the M&P ITC and MITC Are *De Jure* Specific

*Company-Specific Issues*

Comment 81: Whether To Include Kent Building Supplies Division's Sales in JDIL's Denominator

Comment 82: Whether the Department Intended To Address the AIF Program Rather Than the Business Development Program in Its *Preliminary Determination*

Comment 83: Whether To Include Sales of Downstream Products by JDIL's Cross-Owned Companies

Comment 84: Whether To Continue To Find Programs Not Used or Not Measurable for Resolute

Comment 85: Whether the Department Was Correct To Not Countervail Certain Ontario Programs

Comment 86: Whether Discrepancies Identified at Resolute's Verification Should Be Corrected

Comment 87: Whether the Department Was Correct To Not Countervail Certain Quebec Programs

Comment 88: Whether the Department Should Use Tolko's Final Stumpage Prices and Updated Supplemental Data for the Final Determination

*Scope Issues* **[\*51819]**

Comment 89: Definition and Examples of Finished Products in Scope Language

Comment 90: Exclusions Requested for Certain Types of Lumber Harvested From Western Red Cedar, Douglas Fir, and Hemlock Trees

Comment 91: Previous Scope Determinations

Comment 92: Whether Certain Products Are Finished Products

Comment 93: Craft Kits

Comment 94: Whether Certain Scope Language Should Be Removed

Comment 95: Wood Shims

Comment 96: Pre-Painted Wood Products

Comment 97: I-Joists

Comment 98: Miscellaneous Products Discussed by the Government of British Columbia (GBC) and the BC Lumber Trade Council (BCLTC)

Comment 99: Bed-Frame Components/Crating Ladder Components

Comment 100: U.S.-Origin Lumber Sent to Canada for Further Processing

Comment 101: Softwood Lumber Produced in Canada From U.S.-Origin Logs

Comment 102: Remanufactured Goods

Comment 103: Eastern White Pine

Comment 104: Whether the Department Should Conduct a Pass-Through Analysis for Independent Remanufacturers That Purchase Softwood Lumber at Arm's Length

Comment 105: Whether Countervailing Duties Should Only Be Applicable on a First Mill Basis

Comment 106: Whether the Department Should Exclude Softwood Lumber Products From New Brunswick

Comment 107: Whether the Department Should Finalize the Exclusion of Softwood Lumber Products From the Atlantic Provinces

Conclusion

[FR Doc. 2017-24204 Filed 11-7-17; 8:45 am]

BILLING CODE 3510-DS-P

**Import Administration Decision Memorandum**

**FOR YOUR CONVENIENCE LEXIS HAS INCLUDED THE UNPUBLISHED DECISION                        MEMORANDUM HERE**

                                                         C-122-858

                                                         Investigation

                                                         Public Document

                                                         Ops Offices I and III

                       November 1, 2017

MEMORANDUM TO:          Gary Taverman

                       Deputy Assistant Secretary

                       for Antidumping and Countervailing Duty

                       Operations, performing the non-exclusive

                       functions and duties of the Assistant Secretary

                       for Enforcement and Compliance

FROM:                   James Maeder

                       Senior Director

                       performing the duties of the Deputy Assistant

                       Secretary for Antidumping and Countervailing Duty

                       Operations

SUBJECT:                Countervailing Duty Investigation of Certain

                       Softwood Lumber Products from Canada: Issues and

                       Decision Memorandum for the Final Determination

Summary

The Department of Commerce (the Department) determines that countervailable subsidies are being provided to producers and exporters of certain softwood lumber products, as provided in section 705 of the Act. These countervailable subsidies are provided throughout the jurisdiction of Canada. Additionally, the Department determines that critical circumstances do not exist with regard to lumber from Canada. Below is a complete list of the issues in this investigation for which we received comments from interested parties.

General Issues

Comment 1: Whether Critical Circumstances Exist

Comment 2: Whether the Department Should Consider Company-Specific Exclusion Requests

Comment 3: Whether the Department Has the Authority to Countervail Future Assistance

Comment 4: Whether the Department Should Countervail and Apply AFA to Certain Untimely Reported Programs by JDIL and Resolute

Comment 5: Whether the Department Properly Requested Respondent Interested Parties to Report "Other Assistance"

Comment 6: Whether the Department Should Defer Examination of Certain Programs

Comment 7: Whether the Department Should Make a Finding on the NSAs

Comment 8: Whether the Department Correctly Determined if Certain Programs are Specific

Comment 9: Whether the Department Erroneously Applied its Attribution ***Regulations***

Comment 10: Whether the Department Should Rely on Expert Reports

General Stumpage Issues

Comment 11: Whether the Provision of Stumpage Rights Is a Financial Contribution

Comment 12: Whether Evidence Establishes No Market Distortion and Tier-One Benchmarks Should Be Applied

Comment 13: Whether the Department Must Compare Average Benchmark Prices to Average Transaction Prices

Comment 14: Whether the Department Must Conduct a Pass-Through Analysis

Comment 15: Whether the Net Benefit Calculation for Stumpage for LTAR is Correct

Alberta Stumpage Issues

Comment l6: Benchmarking Alberta

Comment 17: Whether the Department Should Use a U.S. Log Benchmark to Compare Respondents' Alberta Stumpage Purchases

British Columbia Stumpage Issues

Comment 18: Whether Crown Auctions in British Columbia Generate Valid Market Prices

Comment 19: Whether the Department Should Use Conversion Factors from the BC Dual Scale Study

Comment 20: Whether the Department Should Rely on Log Prices from Forest 2 Market Instead of WDNR Prices as a Benchmark to Compare Respondents' BC Stumpage Purchases

Comment 21: Whether U.S. PNW Log Prices Should Not Be Used as a Benchmark Because They Do Not Reflect Prevailing Market Conditions in British Columbia

Comment 22: Whether the Department Should Use a Timbermark-Specific Annual Average Stumpage Price

Comment 23: Whether the Department Should Consider BC Stumpage Prices on a "Stand as a Whole" Basis

Comment 24: Whether the Department Should Grant Cost Adjustments in British Columbia

Comment 25: Whether the Department Should Account for Differences in Grading Systems in British Columbia and the United States

Comment 26: Whether the Department Should Adjust for a Non-Contract Profit Rate

Comment 27: Whether the Department Should Adjust the U.S. Benchmark Price to Account for Tenure Security

New Brunswick Stumpage Issues

Comment 28: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks

Comment 29: Whether the Department Should Use the New Brunswick Survey as a Benchmark for Stumpage for LTAR

Ontario Stumpage Issues

Comment 30: Whether Stumpage for Ontario Crown Timber Was Subsidized During the Period of Investigation

Comment 31: Whether Ontario's Private Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark

Comment 32: Whether the Ontario Log Benchmark Relied on by the Department in Lumber IV Would Demonstrate that Ontario Crown Timber is Not Subsidized

Comment 33: Whether Stumpage Charges Distort Ontario's Domestic Log Market and Whether a Log Price Benchmark Shows No Subsidy

Comment 34: Whether to Estimate Ontario's Crown Timber Prices with Quebec's Transposition Equation

Quebec Stumpage Issues

Comment 35: Whether the Quebec Stumpage Market Is Distorted

Comment 36: Whether the Department Made a Clerical Error in Its Calculation of the Quebec Stumpage Benefit That It Should Correct in Its Final Determination

Comment 37: Whether Resolute Pays ***Competitive*** Prices for Its Purchases of Non-TSG or Non-Tenured Timber

Comment 38: Whether the Department Should Account for the Premiums Resolute Pays Over Auction Prices in Quebec

Nova Scotia Benchmark Issues

Comment 39: Whether NS Private Stumpage Prices Can Serve as a Tier-One Benchmark

Comment 40: Whether the Nova Scotia Benchmark Is Comparable to the Provinces at Issue

Comment 41: Whether Nova Scotia's Private Stumpage Survey Data Are Flawed

Comment 42: Whether the Department Should Make Adjustments to the Nova Scotia Benchmark

Comment 43: Whether the Department Should Make Adjustments to Stumpage Rates in Alberta, Ontario, Quebec, and New Brunswick

Log Export Restraint Issues

Comment 44: Whether the Log Export Restraint in British Columbia Restrains Log Exports

omment 45: Whether Log Export Restraints Impact the British Columbia Interior

Comment 46: Whether the Log Export Process in British Columbia is a Financial Contribution

Comment 47: Whether the Constructed Benchmark for Log Export Restraints in the Preliminary Determination was Correct

Purchase of Goods for MTAR Issues

Comment 48: Whether Electricity is a Service and Therefore Whether the Purchase of Electricity by BC Hydro is a Financial Contribution

Comment 49: Whether BC Hydro's Purchase of Electricity is Tied to Electricity

Comment 50: Whether BC Hydro's EPA Program is Specific

Comment 51: Which Benchmark Should the Department Use for the Purchase of Electricity for MTAR by BC Hydro

Comment 52: Whether the GOQ's Purchase of Electricity Is Specific

Comment 53: Whether Resolute's Electricity Sales Are Tied to Non-Subject Merchandise

Comment 54: Whether the Department Should Use the Industrial L Rate as the Benchmark for the GOQ's Purchase of Electricity Under PAE 2011-01

Comment 55: Whether the Industrial L Rate Benchmark Was Improperly Calculated

Grant Program Issues

Comment 56: Whether the Canada-New Brunswick Job Grant Program is Regionally Specific

Comment 57: Whether the Alberta Bioenergy Producer Credit Program is Countervailable

Comment 58: Whether the Department Incorrectly Analyzed the BC Hydro Power Smart: Load Curtailment Program

Comment 59: Whether the Department Correctly Found That the Three BC Hydro Power Smart Programs Countervailed in the Preliminary Determination Are De Jure Specific

Comment 60: Whether Benefits Under the Load Displacement Component of the BC Hydro Power Smart Incentives Subprogram Were Tied to Non-Subject Merchandise

Comment 61: Whether the GNB's Reimbursement of Silviculture and License Management Expenses is Countervailable

Comment 62: Whether the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund Are De Facto Specific

Comment 63: Whether the PCIP Is Countervailable

Tax Program Issues

Comment 64: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

Comment 65: Whether the Department Should Countervail the Federal and Provincial SR&ED Tax Credits That are Purportedly Tied to Non-Subject Merchandise

Comment 66: Whether the Department is Using the Correct Applicable Tax Rate for ACCA for Class 29 Assets

Comment 67: Whether the Department Should Use an Alternative Methodology for Calculating the Benefit of the ACCA for Class 29 Assets

Comment 68: Whether the ACCA for Class 29 Assets Program is Specific

Comment 69: Whether the ACCA for Class 29 Assets is a Tax Deferral

Comment 70: Whether the AJCTC is Specific

Comment 71: Whether the Department Must Account for Gains and Losses in Tax Savings in the AITC Program

Comment 72: Whether the Benefit for the Atlantic Investment Tax Credit Should be Adjusted

Comment 73: Whether the Alberta TEFU Marked Fuel Program Provides a Countervailable Subsidy

Comment 74: Whether the Coloured Fuel Program Evaluated in the Preliminary Determination Provides Countervailable Subsidies

Comment 75: Whether the GNB's Gasoline and Fuel Tax Exemptions and Refund Program Provides a Financial Contribution and Is Specific

Comment 76: Whether LIREPP Constitutes a Financial Contribution and Confers a Benefit on Irving Companies

Comment 77: Whether LIREPP is Tied to Non-Subject Merchandise

Comment 78: Whether Credits for Road Construction Are a Countervailable Subsidy

Comment 79: Whether the Benefit of the Quebec Private Forest Tax Incentive Was Overstated

Comment 80: Whether the M&P ITC and MITC are De Jure Specific

Company-Specific Issues

Comment 81: Whether to Include Kent Building Supplies Division's Sales in JDIL's Denominator

Comment 82: Whether the Department Intended to Address the AIF Program Rather than the Business Development Program in its Preliminary Determination

Comment 83: Whether to Include Sales of Downstream Products by JDIL's Cross-Owned Companies

Comment 84: Whether to Continue to Find Programs Not Used or Not Measurable for Resolute

Comment 85: Whether the Department Was Correct to Not Countervail Certain Ontario Programs

Comment 86: Whether Discrepancies Identified at Resolute's Verification Should Be Corrected

Comment 87: Whether the Department Was Correct to Not Countervail Certain Quebec Programs

Comment 88: Whether the Department Should Use Tolko's Final Stumpage Prices and Updated Supplemental Data for the Final Determination

Scope Issues

Comment 89: Definition and Examples of Finished Products in Scope Language

Comment 90: Exclusions Requested for Certain Types of Lumber Harvested from Western Red Cedar, Douglas Fir, and Hemlock Trees

Comment 91: Previous Scope Determinations

Comment 92: Whether Certain Products are Finished Products

Comment 93: Craft Kits

Comment 94: Whether Certain Scope Language Should be Removed

Comment 95: Wood Shims

Comment 96: Pre-Painted Wood Products

Comment 97: I-Joists

Comment 98: Miscellaneous Products Discussed by the Government of British Columbia (GBC) and the BC Lumber Trade Council (BCLTC)

Comment 99: Bed-Frame Components/Crating Ladder Components

Comment 100: U.S.-Origin Lumber Sent to Canada For Further Processing

Comment 101: Softwood Lumber Produced in Canada from U.S.-Origin Logs

Comment 102: Remanufactured Goods

Comment 103: Eastern White Pine

Comment 104: Whether the Department Should Conduct a Pass-Through Analysis for Independent Remanufacturers That Purchase Softwood Lumber at Arm's Length

Comment 105: Whether Countervailing Duties Should Only Be Applicable on a First Mill Basis

Comment 106: Whether the Department Should Exclude Softwood Lumber Products from New Brunswick

Comment 107: Whether the Department Should Finalize the Exclusion of Softwood Lumber Products from the Atlantic Provinces

Background

Case History

The selected mandatory company respondents in this investigation are Canfor, Resolute, Tolko and West Fraser. n1 The Department also accepted JDIL as a voluntary respondent. n2 On April 26, 2017, the Department published the Preliminary Critical Circumstances Determination. On April 28, 2017, the Department published the Preliminary Determination and aligned this final CVD determination with the final AD determination, in accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4)(i).

n1 See Appendix I for abbreviations, document submissions, and citations.

n2 See Respondent Selection Memorandum; see also JDIL Voluntary Respondent Memorandum.

Following the Preliminary Determination, on May 1, 2017, the Department received ministerial error comments pertaining to the Department's Preliminary Critical Circumstances Determination, n3 On May 15, 2017, the petitioner submitted rebuttal ministerial error comments. n4 From May 2, 2017, through May 5, 2017, the Department received scope comments from various interested parties. On May 5, 2017, the petitioner filed an amendment to the Petition. n5

n3 See GOC Etal Ministerial Error Comments and JDIL Ministerial Error Comments.

n4 See Petitioner Comments Critical Circumstances 3.

n5 See Petitioner Amendment to the Petition.

Between May 5, 2017, and May 18, 2017, the Department requested additional information from the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ.6 Between May 22, 2017, and June 2, 2017, the Department received timely responses from the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ. n7 Between May 26, 2017, and May 30, 2017, various interested parties requested that the Department hold a hearing. n8

n6 See Primary QNR - Correction 2, Canfor Supp QNR 4, Canfor Supp QNR 4 Addendum, JDIL Supp QNR 1, Resolute Supp QNR 8, Tolko Supp QNR 2, Tolko Supp QNR 2 Addendum, West Fraser Supp QNR 3, GOA Supp QNR 2, GOA Supp QNR 2 Addendum, GBC Supp QNR 4, GNB Supp QNR 2, GNS Supp QNR, GOO Supp QNR 2, and GOQ Supp QNR 2.

n7 See Canfor Supp QNR 4 Response, JDIL Supp QNR 1 Response, Resolute Supp QNR 8 Response, Tolko Supp QNR 2 Response, Part 1, Tolko Supp QNR 2 Response, Part 2, West Fraser Supp QNR 3 Response, GOA Supp QNR 2 Response, GBC Supp QNR 4 Response, GNB Supp QNR 2 Response, GNS Supp QNR 3 Response, GNS Supp QNR 3 Response, Errata, GOO Supp QNR 2 Response, and GOQ Supp QNR 2 Response.

n8 See GOC Etal Hearing Request, Canfor Hearing Request, GNS Hearing Request, Petitioner Hearing Request, Resolute CIFQ, and OFIA Hearing Request, RILA Hearing Request, and Tolko Hearing Request.

Between May 31, 2017, and June 16, 2017, the Department issued verification outlines to the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ. n9 From June 5, 2017, to June 29, 2017, the Department conducted verification of the questionnaire responses of the respondents, and the GOA, GBC, GNB, GNS, GOO, and GOQ. The Department released the verification reports between July 11, 2017, and July 18, 2017. n10

n9 See GOO Verification Outline, Canfor Verification Outline, Tolko Verification Outline, West Fraser Verification Outline, JDIL Verification Outline, GBC Verification Outline, GNB Verification Outline, GOA Verification Outline, GNS Verification Outline, GOQ Verification Outline, and Resolute Verification Outline.

n10 See GNS Verification Report, Canfor Verification Report, GBC Verification Report, GOO Verification Report, GOQ Verification Report, Tolko Verification Report, West Fraser Verification Report, GNB Verification Report, GOA Verification Report, JDIL Verification Report, and Resolute Verification Report.

On June 14, 2017, the Department put information on the record concerning the GOC's June 1, 2017, announcement of C$867 million in funding for its softwood lumber producers. n11 On June 17, 2017, the petitioner submitted new factual information concerning the GOC's announcement. n12 On June 20, 2017, the Department issued a questionnaire to the GOC regarding its announcement of C$867 million in funding for its softwood lumber producers. n13 On June 22, 2017, the GOC submitted a letter objecting to the Department's supplemental questionnaire. n14 On July 7, 2017, the GOC responded to the Department's questionnaire regarding the funding. n15

n11 See New Aid Package Memorandum.

n12 See Petitioner Comments GOC Etal QNR Response Aid.

n13 See GOC Etal Supp QNR 4.

n14 See GOC Etal Comments Objection to Supp QNR 4.

n15 See GOC Etal Supp QNR 4 Response.

On June 23, 2017, the Department issued a preliminary scope memorandum, in connection with the preliminary determination of the AD investigation. n16 Also on June 23, 2017, the Department issued a memorandum preliminarily excluding certain softwood lumber products certified by the ALB as being first produced in the provinces of Nova Scotia, Labrador and Newfoundland, and Prince Edward Island (the Atlantic Provinces) from logs harvested in the Atlantic Provinces. n17

n16 See Preliminary Scope IDM.

n17 See Preliminary Exclusion Memorandum.

On July 26, 2017, the Department placed GTA data on the record for use in the final critical circumstances determination.18 On July 31, 2017, the GOC placed rebuttal factual information on the record in response.19

n18 See GTA Data Additional Data.

n19 See GOC Etal Comments GTA Data.

On July 27, 2017, various interested parties submitted timely filed case briefs. n20 On August 4, 2017, and August 7, 2017, various interested parties submitted timely filed rebuttal briefs. n21 On August 17, 2017 and August 18, 2017, the Department held public hearings. n22

n20 See Canfor Case Brief, Central Canada Alliance Case Brief, GBC Case Brief, GBC Case Brief Log Exports, GNB Case Brief, GOA Case Brief, GOC Case Brief, GOC Etal Common Issues Case Brief, GOM Case Brief, GOO Case Brief, GOQ Case Brief, GOS Case Brief, JDIL Case Brief, OCFP Case Brief, Petitioner Case Brief, Resolute Case Brief, Tolko Case Brief, and West Fraser Case Brief.

n21 See Central Alliance Canada Rebuttal Brief, GBC Rebuttal Brief, GNB Rebuttal Brief, GNS Rebuttal Brief, GOC Rebuttal Brief, GOC Etal Common Issues Rebuttal Brief, GOO Rebuttal Brief, GOQ Rebuttal Brief, JDIL Rebuttal Brief, Petitioner Rebuttal Brief, Resolute Rebuttal Brief, and West Fraser Rebuttal Brief.

n22 See Hearing Transcript Day 1, addressing scope matters, and Hearing Transcript Day 2, addressing CVD issues; see also GOC Etal Hearing Transcript Comments.

Period of Investigation

The POI is January 1, 2015, through December 31, 2015.

Scope of the Investigation

The product covered by this investigation is certain softwood lumber from Canada. For a full description of the scope of this investigation, as amended in this final determination, see the accompanying Federal Register notice for this final determination at Appendix I.

On August 11, 2017, the Department issued a memorandum outlining certain revisions made to the scope of the instant investigation, pursuant to a request made by CBP to eliminate certain erroneous HTSUS subheadings and replace them with the correct HTSUS subheadings. Specifically, CBP requested that the Department add HTS numbers 4421.99.7040 and 4421.99.9780 to the ACE module, and remove HTS numbers 4421.91.7040 and 4421.91.9780 from the ACE module. These updates were made for the scope of the countervailing duty and the companion antidumping investigations of softwood lumber from Canada.23

n23 See Updated to HTS Numbers Memorandum.

I. Scope Comments

On July 28, 2017, the Department invited interested parties to submit comments on scope issues that had been raised on the record of this proceeding and the concurrent AD investigation. In response, on or before August 7, 2017, the Department received scope briefs from OCFP; GNB; Canfor; RILA; Barrette; EACOM; Central Canada Alliance; NBLP 24; GNS; JDIL; Woodtone and Maibec; NAFP; and the petitioner. n25

n24 The member companies of the NBLP are: Chaleur Sawmills Assoc.; Delco Forest Products Ltd.; Devon Lumber Co. Ltd.; Fomebu Lumber Co. Ltd.; H.J. Crabbe & Sons Ltd.; JDIL; Marwood Ltd.; MP Atlantic Wood Ltd.; NAFP.; and Twin Rivers Paper Co., Inc.

n25 See OCFP Case Brief; GNB Scope Case Brief; Canfor Scope Brief; RILA Scope Brief; Barrette Wood and EACOM Scope Brief; Central Canada Alliance Case Brief; NBLP Scope Brief; GNS Scope Brief; JDIL Scope Brief; Woodtone Scope Brief; NAFP Scope Brief; Woodtone/Maibec Scope Brief; Petitioner Case Brief.

On August 14, 2017, the Department received scope rebuttal comments from: UFP; IKEA; Central Alliance Canada; RILA; and the petitioner. n26

n26 See UFP Scope Rebuttal (refiling UFP's August 14, 2017 scope comments at the direction of the Department); IKEA Scope Rebuttal; Central Canada Alliance Scope Rebuttal; RILA Scope Rebuttal; Petitioner Scope Rebuttal.

Subsidies Valuation Information

     A. Allocation Period

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the allocation period or the allocation methodology used in the Preliminary Determination. Fora description of the allocation period and the methodology used for this final determination, see the Preliminary Determination.

     B. Attribution of Subsidies

The Department made no changes to the attribution of subsidies. For a description of the methodologies used for this final determination, see the Preliminary Determination.

     C. Denominators

Interested parties raised issues in their case briefs regarding the denominators we used to calculate the countervailable subsidy rates for the subsidy programs described below. For information on the denominators used in the final determination, see the Preliminary Determination, the "Analysis of Comments" section below, and the final determination calculation memoranda.

     D. Loan Interest Rate Benchmarks and Discount Rates

The Department made no changes to, and interested parties raised no issues in their case briefs regarding, the benchmark interest rates used to calculate the benefit for the ACOA Loans -Atlantic Innovation Fund program. For information on the long-term interest rate benchmarks used in in the final determination, see the Preliminary Determination and the final determination calculation memoranda.

Analysis of Programs

     A. Programs Determined To Be Countervailable n27

n27 For additional information on the below subsidy rate calculations, see the Preliminary Determination and the final determination calculation memoranda.

Provision of Stumpage for LTAR n28

n28 Consistent with the Preliminary Determination, we continue to find that none of the mandatory respondents or the voluntary respondent purchased sawlogs in Manitoba or Saskatchewan during the POI. Therefore, we have not included these provinces in our LTAR subsidy benefit analysis.

1. Provision of Stumpage for LTAR - Alberta

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n29 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n30

n29 See Comments 16-17.

n30 See PDM at 56-57.

Canfor:       2.02 percent ad valorem

Tolko:        3.89 percent ad valorem

West Fraser: 8.67 percent ad valorem

2. Provision of Stumpage for LTAR - British Columbia

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n31 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n32

n31 See Comments 11-15 and 18-27.

n32 See PDM at 54-55.

Canfor:       10.29 percent ad valorem

Tolko:        6.82 percent ad valorem

West Fraser: 7.42 percent ad valorem

3. Provision of Stumpage for LTAR - New Brunswick

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n33 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n34

n33 See Comments 28-29.

n34 See PDM at 53-54.

JDIL:         1.40 percent ad valorem

4. Provision of Stumpage for LTAR - Ontario

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n35 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n36

n35 See Comments 30-34.

n36 See PDM at 56.

Resolute:     3.73 percent ad valorem

5. Provision of Stumpage for LTAR - Quebec

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n37 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n38

n37 See Comment 35, 36, 37, and 38.

n38 See PDM at 55-56.

Resolute:     9.90 percent ad valorem

Export Restraints

1. British Columbia Log Export Restraints

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n39 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n40

n39 See Comments 44-47.

n40 See PDM at 57-63.

Canfor:       0.00 percent ad valorem

Tolko:        3.56 percent ad valorem

West Fraser: 0.85 percent ad valorem

Federal Grant Programs

1. Canada-New Brunswick Job Grant Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n41 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n42

n41 See Comment 56.

n42 See PDM at 64.

JDIL:        0.04 percent ad valorem

Alberta Grant Programs

1. BPCP

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n43 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n44

n43 See Comment 57.

n44 See PDM at 64-65.

Canfor:       0.10 percent ad valorem

West Fraser: 0.27 percent ad valorem

British Columbia Grant Programs

1. BC Hydro Power Smart: Energy Manager

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n45 Additionally, the Department is now calculating a subsidy rate for Tolko for this program. n46 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n47

n45 See Comment 59.

n46 See Tolko Final Calculation Memorandum.

n47 See PDM at 65-66.

Canfor:       0.01percent ad valorem

Tolko:        0.01 percent ad valorem

2. BC Hydro Power Smart: Load Curtailment

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n48 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n49

n48 See Comments 58-59.

n49 See PDM at 66.

West Fraser: 0.01 percent ad valorem

3. BC Hydro Power Smart: Incentives

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n50 Additionally, the Department is now calculating a subsidy rate for Tolko for this program. n51 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n52

n50 See Comments 59-60.

n51 See Tolko Final Calculation Memorandum.

n52 See PDM at 66-67.

Canfor:       0.16 percent ad valorem

Tolko:        0.01 percent ad valorem

New Brunswick Grant Programs

1. New Brunswick Provision of Silviculture Grants

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n53 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n54

n53 See Comment 61.

n54 See PDM at 67-68.

JDIL:         0.32 percent ad valorem

2. New Brunswick License Management Fees

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n55 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n56

n55 See Comment 61.

n56 See PDM at 68.

JDIL:         0.53 percent ad valorem

3. FAIP - Payroll Rebate Grant

The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n57

n57 See PDM at 69.

JDIL:         0.01 percent ad valorem

4. New Brunswick Workforce Expansion Program - One Job Pledge

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n58 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n59

n58 See Comment 62.

n59 See PDM at 69-70.

JDIL:         0.01 percent ad valorem

5. New Brunswick Workforce Expansion Program - Youth Employment Fund

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n60 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n61

n60 See Comment 62.

n61 See PDM at 70-71.

JDIL:         0.01 percent ad valorem

Quebec Grant Programs

1. PCIP

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n62 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n63

n62 See Comment 63.

n63 See PDM at 71.

Resolute:     0.05 percent ad valorem

Federal Tax Programs

1. Accelerated Capital Cost Allowance for Class 29 Assets

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n64 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n65

n64 See Comments 68-69.

n65 See PDM at 72.

JDIL:         0.07 percent ad valorem

Canfor:       0.53 percent ad valorem

West Fraser: 0.35 percent ad valorem

2. Apprentice ship Job Creation Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n66 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n67

n66 See Comment 70.

n67 See PDM at 73.

West Fraser: 0.01 percent ad valorem

3. Atlantic Investment Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n68 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n69

n68 See Comment 72.

n69 See PDM at 73-74.

JDIL:         0.70 percent ad valorem

4. SR&ED Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n70 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n71

n70 See Comments 64-65.

n71 See PDM at 74-75.

Canfor:       0.04 percent ad valorem

JDIL:         0.04 percent ad valorem

West Fraser: 0.06 percent ad valorem

Alberta Tax Programs

1. Alberta Tax-Exempt Fuel Program for Marked Fuel

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n72 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n73

n72 See Comment 73.

n73 See PDM at 75.

Tolko:        0.01 percent ad valorem

West Fraser: 0.22 percent ad valorem

2. SR&ED-GOA

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n74 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n75

n74 See Comments 64-65.

n75 See PDM at 75-76.

Tolko:        0.02 percent ad valorem

West Fraser: 0.01 percent ad valorem

British Columbia Tax Programs

1. Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n76 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n77

n76 See Comment 74.

n77 See PDM at 76-77.

Canfor:       0.09 percent ad valorem

Tolko:        0.05 percent ad valorem

West Fraser: 0.04 percent ad valorem

2. SR&ED-GBC

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n78 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n79

n78 See Comments 64-65.

n79 See PDM at 77.

West Fraser: 0.02 percent ad valorem

3. Revitalization Property Tax Exemption - Quesnel

The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n80

n80 See PDM at 77-78.

West Fraser: 0.02 percent ad valorem

Manitoba Tax Programs

1. SR&ED-GOM

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n81 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n82

n81 See Comments 64-65.

n82 See PDM at 78.

Tolko:        0.03 percent ad valorem

2. M&P

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n83 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n84

n83 See Comment 80.

n84 See PDM at 78-79.

Tolko:        0.05 percent ad valorem

New Brunswick Tax and Other Revenue Foregone Programs

1. New Brunswick Large Industrial Renewable Energy Purchase Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n85 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n86

n85 See Comments 76-77.

n86 See PDM at 79-80.

JDIL:         0.09 percent ad valorem

2. NB R&D Tax Credit

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n87 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n88

n87 See Comments 64-65.

n88 See PDM at 80-81.

JDIL:         0.05 percent ad valorem

3. GNB Gasoline & Fuel Tax Exemptions and Refund Program

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n89 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n90

n89 See Comment 75.

n90 See PDM at 81-82.

JDIL:         0.06 percent ad valorem

Quebec Tax Programs

1. Credits for the Construction and Major Repair of Public Access Roads and Bridges in Forest Areas

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n91 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n92

n91 See Comment 78.

n92 See PDM at 82-83.

Resolute:     0.22 percent ad valorem

2. SR&ED Tax Credit - Quebec

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n93 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n94

n93 See Comments 64-65.

n94 See PDM at 83.

West Fraser: 0.03 percent ad valorem

Saskatchewan Tax Programs

1. M&P Tax Credit ITC

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n95 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n96

n95 See Comment 80.

n96 See PDM at 83-84.

Tolko:        0.02 percent ad valorem

Purchase of Goods for MTAR

1. BC Hydro EPAs

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n97 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n98

n97 See Comments 48-51.

n98 See PDM at 84-85.

Tolko:        0.38 percent ad valorem

West Fraser: 0.21 percent ad valorem

2. GOQ Purchase of Electricity for MTAR under PAE 2011-01

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n99 The Department has modified its calculation of the subsidy rate for this program from the Preliminary Determination. n100

n99 See Comment 52, 53, 54, and 55.

n100 See PDM at 85-86.

Resolute:     0.80 percent ad valorem

Loan Programs

1. ACOA Loans -Atlantic Innovation Fund

Interested parties submitted comments in their case briefs regarding this program, which are addressed below. n101 The Department has not modified its calculation of the subsidy rate for this program from the Preliminary Determination. n102

n101 See Comment 82.

n102 See PDM at 87-88.

JDIL:         0.01 percent ad valorem

     B. Programs Determined To Be Tied to Non-Subject Merchandise

Interested parties submitted comments in their case briefs regarding these programs, which are addressed below. n103 The Department has made no changes in the analysis of the following programs from the Preliminarily Determination. n104

n103 See Comment 85.

n104 See PDM at 90-91.

1. Federal Pulp and Paper Green Transformation Program

2. NIER Program

3. FSPF

     C. Programs Determined Not To Provide Countervailable Benefits During the POI

The respondents reported receiving benefits under various programs, some of which were alleged in the Petition and upon which the Department initiated an investigation, and others that were self-reported. Based on the record evidence, we determine that the benefits from certain programs were fully expensed prior to the POI or are less than 0.005 percent ad valorem when attributed to the respondent's applicable sales as discussed above in the "Attribution of Subsidies" section above. n105 Consistent with the Department's practice, n106 we have not included those programs in our final subsidy rate calculations for the respondents. We also determine that it is unnecessary for the Department to make a final determination as to the countervailability of those programs.

n105 For additional information concerning these calculations, see the Preliminary Determination and the final determination calculation memoranda.

n106 See, e.g., CFS from the PRC IDM at "Analysis of Programs, Programs Determined Not To Have Been Used or Not To Have Provided Benefits During the POI for GE;" see also Steel Wheels from the PRC IDM at "Income Tax Reductions for Firms Located in the Shanghai Pudong New District;" see also Aluminum Extrusions from the PRC First Review IDM at "Programs Used By the Alnan Companies;" and see also CRS from Russia IDM at "Tax Deduction for Research and Development Expenses."

For a list of the subsidy programs that do not provide a numerically significant benefit for each respondent, see Appendix II attached to this memorandum.

     D. Programs Determined Not To Be Used During the POI

Each respondent reported non-use of programs on which the Department initiated an investigation. For a list of the subsidy programs not used by each respondent, see Appendix II attached to this memorandum.

     E. Program Determined To Be Not Countervailable

The Department has made no changes in the analysis of the following program from the Preliminarily Determination, n107 We received no comments from interested parties on this program.

n107 See PDM at 90-91.

1. CEP

     F. Programs Deferred Until a Subsequent Administrative Review

The respondents reported receiving assistance under various programs in their questionnaire responses. Section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, the Department "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition," then the Department "shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding." However, under 19 CFR 351.311(c)(2), if we do not have adequate time to investigate the practice, subsidy, or subsidy program, we may defer the investigation until a subsequent administrative review. Given that we did not seek or receive information about this self-reported assistance due to time constraints in this investigation, we do not have sufficient evidence to make findings regarding these programs. Therefore, because of the limited available information on the record, we are deferring our examination of these programs until a future administrative review should this investigation result in a CVD order. See Comment 6 for further discussion.

For a list of the programs deferred until a subsequent administrative review, see Appendix II attached to this memorandum.

     G. New Subsidy Allegations

On March 15, 2017, the petitioner submitted timely NSAs. n108 In the Preliminary Determination, the Department stated that it would consider whether to initiate an investigation with respect to these alleged subsidies after the Preliminary Determination. n109 While we acknowledge that the allegations were timely filed under 19 CFR 301(d)(4)(i)(A), we were unable to initiate an investigation of these programs given the extraordinarily complex nature of these allegations, the amount of time left in our investigation, and the constraints on our resources, which were already devoted to investigating several other complicated subsidy programs alleged by the petitioner and on which we initiated this investigation, in addition to several self-reported programs. See Comment 7 for further discussion.

n108 See Petitioner NSA 1; see also GOC Etal Comments NSA 1, GOC Etal Comments NSA 2, and Resolute Comments NSA.

n109 See PDM at 8.

Analysis of Comments

Comment 1: Whether Critical Circumstances Exist

In the Preliminary Critical Circumstances Determination, the Department preliminarily determined that critical circumstances exist for JDIL and "All Others." The petitioner argues that Canada maintains subsidies that are inconsistent with the SCM Agreement. n110 JDIL argues, because it did not use the EGP or any other export subsidy, critical circumstances do not exist for JDIL. n111 The GOC n112 and Central Canada n113 argue that the respondents did not report using any subsidies that are inconsistent with the SCM Agreement.

n110 See Petitioner CC Case Brief at 3-14; see also Petitioner CC Rebuttal Brief at 2-8.

n111 See JDIL CC Case Brief at 1-2; see also JDIL CC Rebuttal Brief at 1-4.

n112 See GOC Case Brief at 2-3, 7, and 11-14; see also GOC CC Rebuttal Brief at 4-15.

n113 See Central Canada Alliance Case Brief at 2-5.

With respect to the Department's massive imports analysis, the petitioner agrees with the Department's preliminary methodology to determine whether there were massive imports over a relatively short period. n114 The GOC n115 and Central Canada n116 argue that it is the Department's practice to rely on the experience of the respondents for the massive import analysis for all others, rather than relying on GTA data. The GOC also argues that the GTA data are flawed and that the Department should apply a seasonality adjustment. n117

n114 See Petitioner CC Case Brief at 14-15; see also Petitioner CC Rebuttal Brief at 9-23.

n115 See GOC CC Case Brief at 15-22.

n116 See Central Canada Alliance Case Brief at 5-10; see also Central Canada Alliance Rebuttal Brief at 7-9.

n117 See GOC CC Case Brief at 9-11.

Department's Position: In the Preliminary Critical Circumstances Determination, the Department found that, pursuant to section 703(e)(1) of the Act, there was a reasonable basis to believe or suspect that the alleged countervailable subsidy, the EGP, is inconsistent with the SCM Agreement of the WTO. The Department also found that there were massive imports of the subject merchandise over a relatively short period for JDIL and companies subject to the all others rate.

For a final determination, section 705(a)(2) of the Act states that:

If the final determination of the administering authority is affirmative,

then that determination, in any investigation in which the presence of

critical circumstances has been alleged under section 703(e), shall also

contain a finding as to whether (A) the countervailable subsidy is

inconsistent with the Subsidies Agreement, and (B) there have been

massive imports of the subject merchandise over a relatively short period.

In the Preliminary Determination, as none of the respondents reported using the EGP, the Department preliminarily did not countervail the program. The Department subsequently verified that none of the respondents used the EGP or any other subsidy program contingent upon export sales, n118 and therefore, for the final determination, the Department has not made a finding that the EGP (or any other subsidy program at issue that was used by the respondents) is inconsistent with the SCM Agreement. Thus, absent a finding of a subsidy inconsistent with the SCM Agreement, the statutory requirement for an affirmative critical circumstances finding has not been met. n119

n118 See Canfor Verification Report, JDIL Verification Report, Resolute Verification Report, Tolko Verification Report, and West Fraser Verification Report.

n119 See, e.g., Lumber IV Final Determination IDM at "Critical Circumstances."

With respect to the petitioner's argument that the June 1 aid package demonstrates that the GOC and provincial governments maintain prohibited export subsidies, and that is sufficient to satisfy the criterion of a "finding" as to whether the countervailable subsidy is inconsistent with the SCM Agreement, we disagree. While the Department solicited information about the June 1 aid package, based on information in the GOC Etal Supp QNR 4 Response, we find that assistance has yet to be provided. n120 While we question the timing of Canada's announcement of additional assistance subsequent to the Preliminary Determination, the Department has not initiated an investigation into these programs. Although we intend to examine these programs should the Department conduct a future administrative review, we have not made a finding in this final determination that the June 1 aid package includes any subsidy that is inconsistent with the SCM Agreement. See Comment 3 for further discussion.

n120 See Comment 3 for further discussion regarding the June 1 aid package.

Further, with respect to the petitioner's argument that we have determined that critical circumstances exist where an export subsidy has been de minimis, n121 in those investigations, the Department found that the programs were inconsistent with the SCM Agreement because the respondents used the programs. The issue here is not the level of benefit conferred by those programs (e.g whether the benefit conferred is de minimis or above de minimis), but the fact that there has been no benefit conferred at all, because we verified that none of the respondents used an export subsidy or any subsidy inconsistent with the SCM Agreement. As such, we have not made a determination that these programs are countervailable or that they are inconsistent with the SCM Agreement. Thus, we agree with JDIL that, consistent with our decisions in CRS from Russia, LWS from the PRC, and OTR from the PRC, n122 critical circumstances do not exist.

n121 See, e.g., Geogrid Products from the PRC IDM at Comment 12; see also OCTG from Turkey IDM at Comment 15.

n122 See CRS from Russia IDM at 5; see also LWS from the PRC, *73 FR 35639, 35641;* see also OTR from the PRC, 73 FR at 40480, 40483.

With respect to interested parties' arguments concerning the Department's analysis whether there have been massive imports of the subject merchandise over a relatively short period, we find those issues are moot, absent a finding that a subsidy is inconsistent with the SCM Agreement.

Comment 2: Whether the Department Should Consider Company-Specific Exclusion Requests

As part of the Preliminary Determination, the Department found that it lacked the authority to grant company exclusion requests in investigations conducted on a company-specific basis. n123 In reaching this determination, the Department considered the history ofl9 CFR 351.204(e) and concluded that the omission of an exclusion process for investigations conducted on a company-specific basis was intentional. n124

n123 See Company Exclusion Memorandum.

n124 Id.

The GOC disagrees with the Department's interpretation and argues that there should be some real opportunity for companies to be examined, beyond consideration of a voluntary respondent status because it is rare for the Department to accept a voluntary respondent. n125 Moreover, the GOC argues that given the large number of companies, even if the companies had requested voluntary respondent status, this exercise would have been futile. n126 In addition, the GOC argues that no other viable options are available to companies not examined in this investigation given that the Department also amended its company revocation ***regulations*** in 2012. n127 Therefore, for the final determination, the Department should undertake a company exclusion process to consider company exclusion requests.

n125 See GOC Etal Common Issues Case Brief at 137-140.

n126 Id.

n127 Id.

The GOC further argues that should the Department decide to not proceed with a company exclusion process, having used the existence of the expedited review mechanism as a further reason for denying such company exclusion requests, n128 the Department ought to provide all interested parties an opportunity to undergo an expedited review and streamline that process, similar to what was done in the prior lumber proceedings, should this case proceed to order. n129

n128 See Company Exclusion Memorandum at 2-3; see also GOC Etal Common Issues Case Brief at 139.

n129 See GOC Etal Common Issues Case Brief at 139-140.

The GBC separately argues that in considering the applicability of certain ***regulations*** that address certain aspects of company exclusions in CVD proceedings, the Department improperly read subsection (e)(4) divorced from the overall context of subsections (d) and (e) ofl9 CFR 351.204. n130 Specifically, the GBC argues that because subsection (e)(4) only mentions aggregate cases, the Department interpreted that to mean that it cannot consider company exclusions in company-specific cases. However, when looked at in the context of subsections (d) (treatment of voluntary respondents) and (e) (excluding respondents with de minimis or zero subsidy rates), the GBC argues that the Department's interpretation emphasizes the distinction between voluntary respondents and a company exclusions process, but this distinction does not preclude the conduct of a company exclusion process in this investigation. Therefore, the GBC argues that the Department failed to provide Canadian companies, either as a voluntary respondent or through an exclusion process, the ability to demonstrate that they did not receive countervailable subsidies, and thus be excluded from an order, if issued.

n130 See GBC Case Brief at 102-103.

The petitioner agrees with the Department's finding in the Preliminary Determination that it lacks authority to conduct exclusions in company-specific investigations. The petitioner argues that the GOC has not pointed to any authority that would allow the Department to grant company-specific exclusions in this investigation. n131 Further, the petitioner argues that even if the Department were to accept GOC's invitation to ignore its own ***regulations***, there is no reason to question the rationale underlying the agency's different approaches to CVD investigations conducted on an aggregate and individual company basis. n132 In addition, the petitioner argues that no companies, other than JDIL, submitted requests for voluntary respondent status and therefore, the GOC erroneously concludes that such requests would not have been entertained by the Department. Finally, the petitioner argues that, if an order is issued, companies may request expedited reviews and possibly be excluded from an order. n133

n131 See Petitioner Rebuttal Brief at 189-191.

n132 Id.

n133 Id. at 192.

Department's Position: As we noted in the Company Exclusion Memorandum, the Department's ***regulations*** expressly require that we consider exclusion requests in CVD investigations conducted on an aggregate basis, but are silent with respect to a requirement to conduct a similar analysis in company-specific investigations. n134 Moreover, after considering the legislative history and the Preamble n135 language, we concluded that the Department contemplated and rejected an exclusion process in company-specific investigations based on the availability of a separate statutory mechanism though which companies could pursue individual examination and exclusion. n136 Although the GOC takes issue with the Department's decision in the Preliminary Determination, the GOC does not point to any regulatory or statutory authority that would allow the Department to conduct exclusions in a company-specific investigation.

n134 See Company Exclusion Memorandum at 2.

n135 See Preamble, 62 FR at 27296, 27311.

n136 Id.

Furthermore, although the GBC argues that the Department has failed to interpret 19 CFR 351.204(e)(4) in context, we disagree. On this point, the GBC cites 19 CFR 351.204(d) for the proposition that the Department has the discretion to examine voluntary respondents, and that such respondents will be excluded from any resulting order if they are found to have CVD rates of zero or de minimis. n137 But the voluntary respondents referenced under 19 CFR 351.204(d)(1) are those examined "in accordance with section 782(a) of the Act." The only voluntary respondent that is examined under section 782(a) of the Act is JDIL. We disagree that this provision accords the Department the discretion to extend that provision to include other companies that are not selected as voluntary respondents under section 782(a) of the Act. Therefore, the Department continues to find that it does not have the authority to conduct a company exclusion process in the context of this investigation for respondents that have not been individually-investigated.

n137 See GBC Case Brief at 103.

Finally, with respect to the GOC's arguments regarding expedited reviews, we note that our ***regulations*** expressly provide for expedited reviews after publication of a CVD order. Within thirty days of the publication of any order resulting from this investigation, a company not individually examined in the investigation may request that the Department conduct an expedited review in order to receive its own subsidy rate. n138 If a company subject to an expedited review receives an individual net countervailable subsidy rate of de minimis or zero, that company will be excluded from any CVD order. n139 With respect to the GOC's request that the Department develop streamlined procedures for conducting expedited reviews, should this investigation result in an order, the Department will carefully consider how to address any requests for expedited reviews at that time.

n138 See 19 CFR 351.214(k)(l).

n139 See 19 CFR 351.214(k)(3)(iv).

Comment 3: Whether the Department Has the Authority to Countervail Future Assistance

On June 1, 2017, the GOC announced C$867 million in funding for its softwood lumber producers. n140 The GOC argues that the Department does not have the authority to countervail any of the programs in the June 1 aid package because it was announced post-POI and, as stated in the GOC Etal Supp QNR 4 Response, no assistance has been provided by the agencies responsible for the programs. n141

n140 See New Aid Package Memorandum.

n141 See GOC Case Brief at 21-25.

Department's Position: The Department solicited information from the GOC regarding the June 1 aid package on June 20, 2017, n142 to which the GOC responded on July 7, 2017. n143 In the questionnaire response, the GOC stated that, as of the date of submission of the response, the program "has [not yet] provided any support or even been implemented." n144 Thus, because the GOC certified that no assistance has been provided under the announced programs, n145 we have not included any of these programs in the final determination. With no evidence on the record that assistance has been provided, we need not reach the issue of whether the Department has the authority to countervail programs that were not in effect during the POI.

n142 See GOC Etal Supp QNR 4 Response.

n143 Id.

n144 Id. at 1.

n145 Id. at 1, 5, 9, 13, and 17.

Comment 4: Whether the Department Should Countervail and Apply AFA to Certain Untimely Reported Programs by JDIL and Resolute

The petitioner argues that both Resolute and JDIL reported the use of certain subsidy programs after the deadline for submission of such information. Thus, the petitioner argues that the Department should countervail these programs and apply AFA because the respondents withheld information requested by the Department and did not act to the best of their abilities to comply with the Department's requests for information. Specifically, the petitioner argues that the Department should countervail Resolute's sale of wood pellets to Ontario Power Generation and JDIL's receipt of assistance through the IFTA program and the SAFIS program, applying facts available with adverse inferences. n146

n146 See Petitioner Case Brief at 35-46.

Resolute argues that it was forthright in providing information to the Department, that it did not hide its sales of wood pellets, and that it acted to the best of its ability in responding to the Department's requests for information. Resolute argues that the Department was aware of Resolute's wood pellet sales and could have examined the issue further at verification but chose not to do so. Further, because the Department found in the AD Preliminary Determination that wood pellets are not a by-product of softwood lumber production, any benefit derived from selling wood pellets could not benefit the upstream softwood lumber producer. n147

n147 See Resolute Rebuttal Brief at 2-5.

The GOO argues that the Department has no basis upon which to find that the commercial supply of wood pellets to Ontario Power Generation constitutes a countervailable subsidy, and there is no basis for applying AFA as requested by the petitioner. n148

n148 See GOO Rebuttal Brief at 3-5.

JDIL argues that neither the IFTA nor the SAFIS program involves government "assistance". Thus, JDIL did not withhold requested information and the use of AFA is not warranted. n149

n149 See JDIL Rebuttal Brief at 8-11.

The GNB argues that the Department should reject the petitioner's request to apply AFA, noting that the funds received by JDIL under IFTA and SAFIS are not "assistance." Further, the GNB argues that JDIL cooperated to the best of its ability in this investigation. n150

n150 See GNB Rebuttal Brief at 1-2.

The GOC argues that Resolute did not withhold information and contends that it is difficult for respondents and governments to respond to the Department's open-ended "other assistance" question. Having rejected the information from the record, the GOC argues that it would be improper for the Department to use that information in making an AFA determination, and there is no factual foundation upon which the Department can base a finding of failure to report a "program." n151

n151 See GOC Etal Common Issues Rebuttal Brief at 11-18.

Department's Position: As an initial matter, we find that it was appropriate to reject JDIL's and Resolute's reporting of information after the deadline for submission of such information. The Department's ***regulations*** at 19 CFR 351.301 outline the deadlines for submission of factual information in the Department's proceedings. The submissions of both JDIL and Resolute were untimely, in that they contained new factual information that was not specifically requested by the Department at that time, and the information the respondents attempted to submit to the record should have been submitted in their respective initial questionnaire responses in response to the "other assistance" question. n152

n152 See Resolute NFI Rejection Letter and JDIL NFI Rejection Letter.

However, we disagree with the petitioner that AFA is warranted for either JDIL and Resolute in this instance. Under section 776(a) of the Act, the Department shall use facts available in reaching a determination when necessary information is not available on the record, or when an interested party or any other person withholds information that has been requested by the Department, fails to provide such information by the applicable deadline or in the form and manner requested, significantly impedes a proceeding under this title, or provides unverifiable information. Further, under subsection (b), the Department "may" use an adverse inference in selecting among facts otherwise available if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information. n153

n153 See section 776(b)(1)(A) of the Act.

Given the unique circumstances of this proceeding, to the extent that information is not on the record regarding Resolute's sale of wood pellets to the GOO, or JDIL's receipt of funds under IFTA and SAFIS, we do not find that the missing information became "necessary" in this proceeding. All respondents in this proceeding reported a multitude of potential governmental assistance in response to the Department's "other assistance" question. Under 19 CFR 351.311(b), if the Department discovers a program that appears to provide a countervailable subsidy with respect to the subject merchandise, the Department will examine the program if sufficient time remains before the scheduled date for the final determination. In the Preliminary Determination, the Department listed approximately 30 programs for which it stated that we required additional information before reaching a preliminary determination regarding the countervailability of the reported programs. n154 All of these programs were self-reported by the respondents in response to the "other assistance" question. n155 Further, as discussed in Comment 6, the Department has deferred consideration of these timely self-reported programs listed in the Preliminary Determination that we determined required additional information. Because there are several dozen programs discovered during the course of this investigation that the Department has been unable to examine, the Department would also not have sufficient time to consider these additional three programs, possibly collect further information, and analyze it to determine whether the programs were countervailable and thus should be included in the subsidy calculation for JDIL and Resolute. Therefore, we find that it would not be appropriate, in this case, to apply AFA to JDIL and Resolute for the three additional programs belatedly reported as "other assistance."

n154 See PDM at 88-89.

n155 See, e.g., Canfor Primary QNR Response, Part 1, Resolute Primary QNR, Part 1, JDIL Primary QNR Response, Tolko Primary QNR Response, and West Fraser Primary QNR Response, Part 1.

The instant case is distinguishable from SC Paper Final, in that, though untimely, the information that JDIL and Resolute attempted to submit was prior to verification. When information is discovered at verification, it precludes the Department from fully investigating and verifying the information. The purpose of verification is "to verify the accuracy of information previously submitted to the record by the respondent," not to collect new information that had been previously requested but not reported. n156 Here, the Department could have solicited any additional information regarding these programs from JDIL and Resolute prior to verification, but chose not to do so, in light of the same resource constraints that prevented the Department from soliciting additional information regarding the other timely self-reported programs prior to the start of verifications.

n156 See, e.g., Silica Bricks and Shapes from the PRC IDM at Comment 7; see also [*Marsan Gida Sanayi Ve Ticaret A.S., 931 F. Supp. 2d at 1280*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:594G-J451-F04B-W007-00000-00&context=) (agreeing that "[t]he purpose of verification is not to collect new information").

Further, we disagree with the GOC that the "other assistance" question is vague or overly burdensome. As we state in Comment 5, consistent with the CIT's holding in Changzhou Trina Solar Energy, n157 we find that the Department's "other assistance" question enables the Department to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable in the course of a proceeding, and is consistent with its broad discretion to seek information it deems relevant to its determination. However, as noted above, we have declined to apply AFA to JDIL and Resolute for the late submission of information in response to the "other assistance" question, due to the Department's inability to examine several other programs timely reported in response to the "other assistance" question.

n157 See [*Changzhou Trina Solar Energy, 195 F. Supp. 3d at 1346*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MHC-M0R1-F04B-W00G-00000-00&context=) ("Commerce's inquiry concerning the full scope of governmental assistance provided by the [Government of China] and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to [sections 702](a) and [775 of the Act], this inquiry was not contrary to law.").

Comment 5: Whether the Department Properly Requested Respondent Interested Parties to Report "Other Assistance"

In its standard initial questionnaire sent to the GOC and all respondents in this investigation, the Department requested information from the government and respondents related to programs upon which an investigation had been initiated. The Department further requested that the GOC identify and describe "any other forms of assistance" provided directly or indirectly by the government to producers or exporters of softwood lumber, including the respondents, and that each respondent identify and describe "any other forms of assistance" that it received from the GOC during the POI. n158

n158 See Primary QNR, Section II at 23, 24, 33, 43, and 53 and Section III at 153, 155, 157, and 160.

The GOC, GBC, Canfor, and Resolute argue that the Department's question requesting that respondent interested parties report "other assistance" received by respondents from governments is inconsistent with the United States' domestic law and international obligations. n159 The GOC and Resolute argue that the question improperly shifts to respondents what should be the petitioner's burden to identify and allege countervailable subsidies. n160 The GOC and Resolute contend that the question is overly broad because the Department has never defined the meaning or scope of the word "assistance," causing respondent interested parties to report all possible revenue from a government, even if the "assistance" is allegedly irrelevant to the subject merchandise under investigation, for fear that the Department could apply adverse facts available and countervail any unreported assistance.161 The GOC argues that the legislative history of section 775 of the Act and the 1988 CVD Preamble indicate that the same threshold countervailability requirements must be met before the Department can pursue the examination of any subsidies under that provision orl9 CFR 351.311. n162

n159 See GOC Etal Common Issues Case Brief at 86-97; see also GBC Case Brief at 98-100; see also Canfor Case Brief at 66; see also Resolute Case Brief at 14-17.

n160 See GOC Etal Common Issues Case Brief at 87-89; see also Resolute Case Brief at 15.

n161 See GOC Etal Common Issues Case Brief at 90-91; see also Resolute Case Brief at 16.

n162 See GOC Etal Common Issues Case Brief at 92-93.

Further, Resolute argues that the Department has arbitrarily abused its investigative authority to ask questions by presuming that reported assistance is countervailable, relying on SC Paper from Canada. n163 Resolute particularly claims that the Department improperly deemed its reported assistance under PCIP to be countervailable. n164

n163 See Resolute Case Brief at 15-16.

n164 Id. at 16-17.

The GBC additionally argues that the Department should continue to find that several programs reported under the "other assistance" question did not provide countervailable benefits. n165 The GOC argues that there is no basis for the Department to apply facts available or AFA to any non-initiated programs that may fall under "other assistance." n166 The GBC, Canfor, and Tolko argue that if the Department issues a final determination with respect to any program reported as "other assistance" that the Department did not address in the Preliminary Determination., it should allow these parties to comment on those programs. n167

n165 See GBC Case Brief at 98.

n166 See GOC Etal Common Issues Case Brief at 94-97.

n167 See GBC Case Brief at 99; see also Canfor Case Brief at 65-66; see also Tolko Case Brief at 65.

The petitioner rebuts stating that the Department's other assistance question is permissible as part of its broad independent investigative authority, and that the Department should apply AFA to Resolute and JDIL for failing to fully respond to the "other assistance" question in their initial questionnaire responses. n168

n168 See Petitioner Rebuttal Brief at 180-187.

The GOQ argues on rebuttal that, at verification, the Department searched for other subsidies received by the respondents, and found no evidence of other subsidies. n169

n169 See GOQ Rebuttal Brief at 7.

Department's Position: We disagree that the Department's request that respondent interested parties report "other assistance" received by respondents from governments is inconsistent with domestic law or the United States' international obligations. Investigations into potentially countervailable subsidies to a class or kind of merchandise are initiated in one of two ways. First, an investigation can be self-initiated by the Department. n170 Second, a domestic interested party may file a petition for the imposition of countervailing duties on behalf of an industry. n171 Under the second mechanism, those parties are obligated to support their subsidy allegations with information reasonably available to them, and those allegations must identify the elements of a countervailable subsidy (i.e., specificity, benefit, and financial contribution). n172

n170 See section 702(a) of the Act.

n171 See section 702(b) of the Act.

n172 See section 702(b)(1) of the Act.

However, once an investigation has been initiated through one of the above mechanisms, then, under section 775 of the Act, the Department may also investigate potential subsidies it discovers in the course of the proceeding. Specifically, in the course of an investigation, the Department may "discover)] a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in the countervailing duty petition." n173 In such a case, the Department "shall include the practice, subsidy, or subsidy program in the proceeding." n174 Thus, section 775 of the Act imposes an affirmative obligation on the Department to "consolidate in one investigation … all subsidies known by petitioning parties to the investigation or by the [Department] relating to [subject] merchandise" to ensure "proper aggregation of subsidization practices." n175 The Department's ***regulations*** carve out a limited exception to its obligation to investigate what "appear]]" to be countervailable subsidies: when the Department discovers a potential subsidy too late in a proceeding, it may defer its analysis of the program until a subsequent review, if any. n176 Moreover, the Department has broad discretion to determine which information it deems relevant to its determination, and to request that information. n177

n173 See section 775 of the Act.

n174 Id. (emphasis added).

n175 See S. Rep. No. 96-249, at 98 (1979); see also [*Allegheny I, 112 F. Supp. 2d at 1150 n.12*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:412Y-VR60-003S-N00M-00000-00&context=) ("Congress … clearly intended that all potentially countervailable programs be investigated and catalogued, regardless of when evidence on these programs became reasonably available.").

n176 See 19 CFR 351.311(b).

n177 See [*Changzhou Trina Solar Energy Co., 195 F. Supp 3d at 1341*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MHC-M0R1-F04B-W00G-00000-00&context=) (holding that the Department has "independent authority, pursuant to [section 775 of the Act], to examine additional subsidization in the production of subject merchandise," and this "broad investigative discretion" permits the Department to require respondents to report additional forms of governmental assistance). See also, e.g., [*Ansaldo Componeti, S.p.A., 628 F. Supp. at 205;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2YG0-003R-S13H-00000-00&context=) see also [*Essar Steel Ltd., 721 F. Supp. 2d at 1298-1299,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50W4-7BD1-652G-9006-00000-00&context=) revoked in part on other grounds', see also [*Acciai Speciali Terni S.p.A., 26 CIT at 167;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:459P-RS60-003S-N09S-00000-00&context=) see also [*PAM, S.p.A., 495 F. Supp. 2d at 1369.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P49-0P70-TXFN-F1WP-00000-00&context=)

Thus, consistent with the CIT's holding in Changzhou Trina Solar Energy, n178 we find that the Department's "other assistance" question enables the Department to effectuate its obligation to investigate subsidies that it discovers that appear to be countervailable in the course of a proceeding, and is consistent with its broad discretion to seek information it deems relevant to its determination.

n178 See [*Changzhou Trina Solar Energy, 195 F. Supp. 3d at 1346*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MHC-M0R1-F04B-W00G-00000-00&context=) ("Commerce's inquiry concerning the full scope of governmental assistance provided by the [Government of China] and received by the Respondents in the production of subject merchandise was within the agency's independent investigative authority pursuant to [sections 702](a) and [775 of the Act], this inquiry was not contrary to law.").

The GOC relies on the legislative history from the 1979 legislation that first enacted section 775 of the Act to support its contention that the Department was expected to apply the same threshold standards that apply where a subsidy is alleged by a petitioner under section 702 of the Act whenever the Department itself"discovers" a potential subsidy under section 775 of the Act. n179 However, such an interpretation is not supported by the statute. The language quoted by the GOC is referring to the second option presented under section 775 of the Act'the requirement that the Department will refer any discovered potential subsidies not connected to the merchandise under investigation to the public library maintained by the Department. n180 That is, the House Ways and Means Committee expected that any potential subsidies not relating to the subject merchandise under investigation would be investigated in a separate investigation under the normal standards of an investigation initiated under section 702(a) of the Act. We find that the Committee's expectation does not preclude the Department from investigating a program or subsidies that appear to be countervailable with respect to merchandise which is the subject of the proceeding, and that we are not precluded from asking questions that enable the Department to effectuate this obligation. n181

n179 See GOC Etal Common Issues Case Brief at 92.

n180 See H. Rep. No. 96-317, at 75 (1979).

n181 See S. Rep. No. 96-249, at 98 (1979); see also [*Allegheny I, 112 F. Supp. 2d at 1150 n.12.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:412Y-VR60-003S-N00M-00000-00&context=)

Similarly, although the GOC relies on the Preamble to argue that the Department has "acknowledged that its usual initiation standard would apply under section 775" of the Act, n182 we find that this argument is misplaced. The Department stated, in the Preamble, that its ***regulations*** "adequately describe the requirements for the initiation and conduct of a countervailing duty investigation," and thus there was no further need to describe "how the Department would investigate a subsidy practice discovered during an antidumping investigation," n183 As this is a countervailing duty investigation, the Department's statement in the Preamble regarding investigations of subsidy practices discovered during antidumping duty investigations is irrelevant. Here, the Department has followed the requirements for the initiation and conduct of a countervailing duty investigation, and that the "other assistance" question is not precluded by those requirements.

n182 See GOC Etal Common Issues Case Brief at 93 (citing 1988 CVD Preamble, 53 FR at 52344).

n183 See 1988 CVD Preamble, 53 FR at 52344 (emphasis added).

Respondent interested parties also cite to Allegheny II to support the existence of a threshold countervailability finding requirement before including non-initiated programs in an investigation. n184 However, Allegheny II is distinguishable, as it concerned the Department's decision not to investigate a late-filed subsidy allegation. In that disparate context, the CIT examined what it meant for a practice to "appear" to be countervailable within the meaning of section 775 of the Act, such that the Department had an obligation to investigate the discovered program. The Department explained that when an allegation was insufficient, it was not required to go on "fishing expeditions" to determine whether an alleged subsidy or practice was countervailable. However, the facts of this investigation differ. Here, the Department requested information regarding potentially countervailable subsidies, in order to determine whether any such assistance appeared to be countervailable (i.e., the elements necessary for the imposition of countervailing duties are present) and attributable to subject merchandise. The request was within its independent investigative authority and not precluded by Allegheny II. n185

n184 See [*Allegheny II, 25 Ct. Int'l Trade 816, 821;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4495-4RH0-003S-N07M-00000-00&context=) see also GOC Case Brief at 93.

n185 See [*Changzhou Trina Solar Energy, 195 F. Supp. 3d at 1343*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MHC-M0R1-F04B-W00G-00000-00&context=) ("[B]ecause the issue here is not whether Commerce was required to examine these additional programs pursuant to a petitioner's request that the agency invoke [section 775 of the Act], cf. [*Allegheny Ludlum, 25 CIT at 824*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4495-4RH0-003S-N07M-00000-00&context=) ..., but rather whether Commerce reasonably exercised its own independent investigative authority, Allegheny Ludlum is not controlling.").

Although Resolute and the GOC argue that the question is too broad, and could conceivably encompass programs such as "general infrastructure ..., general reduction in income taxes, or social services such as health care," without regard to countervailability, we disagree. n186 We have not faulted any party for failing to identify obvious general infrastructure spending, and have not "penalize[d] respondents" for failing to disclose unreported other assistance in this proceeding. n187 Even if the question implicates some generally-available programs, however, the Department is not precluded from inquiring about other assistance in order to determine whether a program or subsidy is countervailable and attributable to the subject merchandise. n188

n186 See GOC Etal Common Issues Case Brief at 91.

n187 Id.; see also Comment 4.

n188 See [*Ansaldo Componeti S.p.A., 628 F. Supp. at 205;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-2YG0-003R-S13H-00000-00&context=) see also [*Essar Steel Ltd., 721 F. Supp. 2d at 1298-1299;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:50W4-7BD1-652G-9006-00000-00&context=) see also [*Acciai Speciali Terni S.p.A., 26 CIT at 167;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:459P-RS60-003S-N09S-00000-00&context=) see also [*PAM, S.p.A., 495 F. Supp. 2d at 1369.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4P49-0P70-TXFN-F1WP-00000-00&context=)

Neither does the "other assistance" question unlawfully shift the burden of production from the petitioners to respondents. As explained above, the result is consistent with section 775 of the Act and 19 CFR 351.311(b), which require that the Department investigate potentially countervailable subsidies when sufficient time remains in the proceeding to do so. n189 Here, at the outset of the investigation, sufficient time remained in the investigation for the Department to inquire about other forms of assistance received by the respondents during the POI, and so the Department requested that the respondent interested parties report such information for the Department to examine.

n189 [*Changzhou Trina Solar Energy, 195 F. Supp. 3d at 1345*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5MHC-M0R1-F04B-W00G-00000-00&context=) ("[T]he petitioner's burden is irrelevant when Commerce chooses to exercise its independent investigative authority under [section 775 of the Act] … [and thus] Commerce did not unlawfully shift any burden from the petitioner" through its request that respondents report any other forms of governmental assistance).

Respondent interested parties cite to Solar Worldfor the proposition that the Department's "other assistance" question unlawfully shifts the burden of production from the petitioner to respondents. n190 We disagree. In Solar World, the CIT held that the Department reasonably declined to initiate an investigation into subsidy programs alleged in the petition that lacked a sufficient evidentiary basis. n191 The Court rejected Solar World's assertions that the Department should have supplemented the allegations on its own accord, holding that "[u]nder Section (702](b)(l), it is not for Commerce to seek out evidence supporting the interested party's petition." n192 Thus, the CIT's holding in Solar World relates to the Department's discretion under section 702(b)(1) of the Act not to initiate where evidence is insufficient; it says nothing about the boundaries of the Department's authority under section 775 of the Act.

n190 See [*Solar World Ams Inc., 125 F. Supp. 3d at 1318;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HK9-B891-F04B-W004-00000-00&context=) see also GOC Case Brief at 89.

n191 See [*Solar World Ams Inc., 125 F. Supp. 3d at 1330.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5HK9-B891-F04B-W004-00000-00&context=)

n192 Id. (referring to section 702 of the Act).

Although parties argue that the Department's "other assistance" question is incongruent with the United States' international obligations, the parties have not identified a WTO Panel Report or WTO Appellate Body Report reaching this conclusion. In any event, the Act is fully consistent with the international obligations of the United States. Moreover, the Department is governed by U.S. law, and, as we have explained, our "other assistance" question is fully consistent with section 775 of the Act. The respondents' reading of the SCM Agreement, in this context, has no bearing upon these proceedings. The Department's "other assistance" question is governed by, and consistent with, U.S. law.

We address the countervailability of the specific programs raised by Resolute and the GBC in separate comments. See PCIP (Comment 63), Colored Fuel Tax Rate (Comment 74), SR&ED (Comments 64 and 65). Similarly, we address our determination not to apply AFA to potential "other assistance" that was untimely reported by JDIL and Resolute in separate comments. See Comment 4.

Finally, because this final determination addresses only programs for which we made a preliminary determination, we do not address the parties' requests for an opportunity to comment on those unaddressed programs.

Comment 6: Whether the Department Should Defer Examination of Certain Programs

The Canadian Parties argue that, having failed to request further information for the "Programs Preliminarily Determined to Require Additional Information," the Department is precluded from countervailing such programs. n193 They submit that, if the Department had insufficient information to make a determination at the preliminary stage, and did not make any requests for information, then it has insufficient information at the final stage to countervail these programs. They argue that to do otherwise would be equivalent to a facts available determination for which there is no statutory basis. Further, they assert that a determination to countervail any of the programs would deny the respondents' due process rights and violate Department practice. In particular, the GOA argues that, should the Department decide to address any of the deferred programs in the final determination, then consistent with basic principles of due process, the GOA requests adequate notice and an opportunity to be heard regarding such programs prior to the final. n194 However, should the Department violate due process, the GOA submits that it preserves all arguments related to the programs.

n193 See GOC Etal Common Issues Case Brief at 140-147.

n194 See GOA Case Brief at 77-79.

Therefore, the Canadian Parties argue the Department must defer consideration of these programs until any subsequent review. If the Department nevertheless decides to include the programs in the final, then the GOC and GOQ argue that the Department should find that the federal and Quebec programs did not confer countervailable benefits. n195 Resolute argues that the Department should disregard the programs that it decided not to pursue. n196

n195 See GOC Case Brief at 18-21; see also GOQ Case Brief at 64-71.

n196 See Resolute Case Brief at 55-56.

In rebuttal, the petitioner asserts that Canadian Parties' arguments are without merit because they fail to recognize the statute, which states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition." n197

n197 See Petitioner Rebuttal Brief at 187-188; see also section775 of the Act; and 19 CFR 351.311(b).

Department's Position: In the Preliminary Determination, we did not make preliminary findings with respect to the countervailability of two federal and 28 provincial programs that were reported during the course of the investigation. n198 We listed those programs as "Programs Preliminarily Determined to Require Additional Information."

n198 See PDM at 88-89. In the PDM, we listed 27 provincial programs in the section "Programs Preliminarily Determined To Require Additional Information." We inadvertently excluded from the list the GBC's Tenure Take back program. Therefore, we did not make preliminary findings with regard to 28 provincial programs.

Section 775 of the Act and 19 CFR 351.311(b) direct the Department to examine apparent subsidy practices discovered during the course of a proceeding and not alleged in the petition if the Department concludes that sufficient time remains before the scheduled date for the final determination. Here, parties reported 30 distinct subsidy programs, several of which are complex programs, such as electricity assistance incentives. Given time constraints and the constraints on our resources, which were already devoted to investigating the numerous subsidy programs on which we initiated, we were unable to issue supplemental questionnaires requesting additional information on the 30 programs to not only the federal and provincial governments, but also to the five respondent companies and their responding cross-owned affiliates either before or after the Preliminary Determination. Additionally, after the Preliminary Determination, the Department conducted numerous verifications with the involved provincial governments and five company respondents. Parties subsequently submitted many case and rebuttal briefs raising numerous complex issues, which further strained the Department's available resources. Based on the foregoing, we concluded that we lacked sufficient time and resources to conduct an examination of the 30 programs. We, therefore, are deferring an examination of those subsidy programs until a subsequent administrative review, should this case go to order, pursuant tol9 CFR 351.311(c)(2). As such, we consider the Canadian Parties' comments regarding whether the Department can lawfully include this assistance in the final determination to be moot. We likewise need not address parties' arguments regarding whether certain deferred programs are, or are not, countervailable.

Comment 7: Whether the Department Should Make a Finding On the NSAs

The petitioner states that it timely submitted evidence and an allegation on March 15, 2017, n199 that three additional subsidy programs meet the statutory definition of a countervailable subsidy: (1) the provision of a loan by the GOQ and GOO to Resolute as part of the company's bankruptcy proceedings (Resolute Bankruptcy Loans); (2) preferential treatment for maximum liability amounts guaranteed by EDC for U.S. export sales (Account Performance Security Guarantees); and (3) tax incentives for private forest land property by the GNB (GNB Land Tax Incentives). n200 The petitioner asserts that the Department is not limited to subsidy programs identified in the petition. Furthermore, the statute requires the Department to include in its investigation a program which appears to be a countervailable subsidy with respect to the subject merchandise if such a program is discovered in the course of the proceeding. n201 The petitioner submits that, because it submitted these NSAs by the deadline set forth inl9 CFR 351.301(c)(2)(iv)(A), the Department cannot find that it had insufficient time to investigate these newly-alleged programs, and thus, the Department should not defer consideration of these programs to a subsequent administrative review, but find that they constitute countervailable subsidies which conferred measurable benefits during the POI.

n199 See Petitioner NSA 1.

n200 See Petitioner Case Brief at 60-68.

n201 Id. at 61-63.

The GOO, GOQ, and Resolute assert that the company was not absolved of its provincial pension obligations via the bankruptcy proceedings. n202 They submit that the petitioner's description of the restructuring as bankruptcy loans is a mischaracterization of a standard procedure conducted in accordance with Canadian and U.S. law. With regard to the Account Performance Security Guarantees, Resolute claims that it bought insurance from EDC at a market price and no benefits were conferred. Concerning the GNB Land Tax Incentives, JDIL states that the GNB taxes privately owned timberlands at the same rate, regardless of whether the properties are in productive use or not. n203 JDIL, thus, argues that the petitioner failed to provide reasonably available evidentiary support for specificity, and the Department should find the allegation deficient. The GNB states that, because the Department neither initiated nor conducted an investigation of the GNB Land Tax Incentives, it cannot lawfully make a determination on the countervailability of this program in the final determination. n204

n202 See GOO Rebuttal Brief at 5-9; see also GOQ Rebuttal Brief at 9-12; see also Resolute Rebuttal Brief at 6-10.

n203 See JDIL Rebuttal Brief at 7-8.

n204 See GNB Rebuttal Brief at 2-4.

Jointly, the Canadian Parties state that the Department initiated no investigation with respect to any of the three alleged subsidies, collected no information regarding the allegations, and conducted no verification of information that could be the basis for assessing countervailing duties. n205 The GOQ adds that, because the petitioner failed to meet any of the initiation thresholds, there is no basis on which the Department lawfully can include the NSAs in the final determination. n206 207 A final determination that these programs are countervailable would be equivalent to a facts available determination, for which there is no basis. They add that a determination to countervail any of the programs in the final - with or without a formal initiation - would deny the respondents' due process rights and violate agency practice as the Department has not issued a preliminary determination with respect to any of the programs.

n205 See GOC Etal Common Issues Rebuttal Brief at 18-23.

n206 See GOQ Rebuttal Brief at 3-8.

Department's Position: In the Preliminary Determination, we stated that we would consider whether to initiate an investigation with respect to the petitioner's timely filed NSAs after the Preliminary Determination. n207 Section 775 of the Act provides, in relevant part, that if, during the course of a CVD proceeding, the Department discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a CVD petition, then the Department shall include the practice, subsidy, or subsidy program in the proceeding if the practice, subsidy, or subsidy program appears to be a countervailable subsidy with respect to the merchandise which is the subject of the proceeding. However, the inclusion of such a practice should not delay the conclusion of any current investigation any more than absolutely necessary. n208

n207 See PDM at 8.

n208 See S. Rep. No. 96-249, at 98 (1979).

The courts have recognized that, while the Department has a general duty to investigate subsidy allegations that arise during the course of an investigation, that duty is tempered by the acknowledgment that investigating subsidies takes time, and that the Department may not always have sufficient time or resources before the final determination to investigate a newly alleged subsidy. Thus, "[b]ased upon the plain meaning of th[e] statute and ***regulation***, it is clear that Commerce has an affirmative duty to investigate subsidies discovered during the course of an investigation, even if (for practical reasons) the investigation of the newly discovered subsidies must wait for an administrative review." n209

n209 See [*Allegheny I, 112 F. Supp. 2d at 1150.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:412Y-VR60-003S-N00M-00000-00&context=)

Further, the Department has previously deferred the investigation of extraordinarily complex NSAs when faced with limitations on time and other resources in the proceeding. n210 Here, the petitioner alleged three complex subsidy programs involving loans provided in bankruptcy/restructuring proceedings, government guarantees for account receivables, and exemption or remission of direct taxes. Although we stated that we would consider whether to initiate an investigation into these newly-alleged subsidies after the Preliminary Determination, we found that we were unable to develop a sufficiently complete investigative record of the complex programs alleged (i.e., analyze the information for initiation, issue questionnaires, review questionnaire responses, conduct verification, etc.), given the limited amount of time left in our investigation and the constraints on our resources, which were already devoted to investigating the numerous and complex subsidy programs alleged by the petitioner and on which we initiated, in addition to the many self-reported programs by the respondents. Additionally, during this same time the Department was required to conduct numerous verifications with the involved provincial governments and five company respondents involved in this investigation. n211 Parties subsequently submitted many case and rebuttal briefs raising numerous complex issues, which further strained the Department's available resources.

n210 See, e.g., OCTG from the PRC IDM at Comment 28; see also Shrimp from the PRC IDM at Comment 11. In those investigations, the Department determined that, because there was insufficient time before the final determinations, it could not investigate certain complex and timely-filed new subsidy allegations, given its limited time and resources, and deferred such examination until the first review.

n211 See section 782(i)(1) of the Act.

Although 19 CFR 351.301(c)(2)(iv)(A) states that a countervailable subsidy allegation made by the petitioner is due no later than 40 days before the preliminary determination, it does not provide that the Department shall investigate all timely filed allegations. As the CIT recognized in TMKIPSCO, "[t]he plain meaning of this regulatory provision imposes a burden on the interested party to timely raise new subsidy allegations, but it does not require [the Department] to investigate all timely raised allegations." n212 Rather, the Department has discretion to determine whether sufficient time remains in a proceeding to investigate newly-alleged subsidies. n213 For reasons described above, though the NSAs were timely filed under 19 CFR 351.301(c)(2)(iv)(A), we did not have sufficient time to fully examine these alleged programs. We, therefore, are deferring our examination of these NSAs until a subsequent administrative review, should this case to go to order, pursuant tol9 CFR 351.311(c)(2).

n212 See [*TMK IPSCO, 179 F. Supp. 3d 1328, 1336*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5K5W-JN81-F04B-W00T-00000-00&context=) (discussing subsection 351.301(d)(4)(i)(A), the precursor to subsection 351.301(c)(2)(iv)(A)).

n213 Id.

Comment 8: Whether the Department Correctly Determined if Certain Programs are Specific

The GOC argues that where subsidies are widely available, the subsidy is not specific, and that the Department ignored this principle when it preliminarily found that a number of programs were de jure or de facto specific under sections 771(5A)(D)(i) and (5A)(D)(iii)(I)-(III) of the Act. n214 The GOC argues that the fact that a subsidy is not universally available does not make it specific, because the statute does not require a subsidy to be available to all enterprises or industries in order to be non-specific. n215 Rather, subsidies that are widely available (even if not universally available) are non-specific. n216 In particular, the GOC takes issue with the Department's preliminary determinations that the ACCA Program for Class 29 Assets, and the New Brunswick Workforce Expansion Program - One Job Pledge are specific. n217

n214 See GOC Etal Common Issues Case Brief at 97-98.

n215 Id. at 98-99.

n216 Id.

n217 Id. at 100.

Department's Position: In reaching this final determination, the Department applied section 771(5A) of the Act in determining whether investigated programs are specific. We address the Department's determinations that the ACCA Program for Class 29 Assets and the New Brunswick Workforce Expansion Program - One Job Pledge are specific within the meaning of section 771(5A)(D) of the Act in conjunction with parties' particular arguments regarding the specificity of these programs. See ACCA Program for Class 29 Assets (Comment 68); New Brunswick Workforce Expansion Program (Comment 62).

Comment 9: Whether the Department Erroneously Applied its Attribution ***Regulations***

The GOC notes that the Department has specific rules pertaining to the proper attribution of subsidies to particular products, such as 19 CFR 351.525(b)(5). n218 The GOC argues that the Department ignored these rules and "found several provincial programs to be countervailable subsidies in contravention of its tying ***regulation*** and the statutory requirement that assistance must benefit subject merchandise before it is treated as a countervailable subsidy." n219 In particular, the GOC takes issue with the Department's preliminary determination concerning "electricity programs where the electricity was produced by pulp and paper mills and tax credit programs where credits provided under the program were tied to projects or investments at facilities that do not produce lumber or inputs into softwood lumber." n220

n218 See GOC Etal Common Issues Case Brief at 101.

n219 Id. at 102.

n220 Id.

Department's Position: In reaching this final determination, the Department appropriately applied 19 CFR 351.525(b)(5) in examining whether subsidies were tied to particular products or particular markets. The Department has addressed the GOC's concerns related to this issue in Comment 60 concerning the BC Hydro Power Smart Incentives program, Comment 57 concerning the Alberta Bioenergy Producer Credit Program, Comment 53 concerning whether Resolute's electricity sales were tied to non-subject merchandise, and Comment 65 concerning SR&ED Tax Credits.

Comment 10: Whether the Department Should Rely on Expert Reports

The Canadian Parties assert that the Department is required to examine the whole record, including evidence that detracts from its conclusion when making a determination. n221 Therefore, the Department must consider the expert reports on their merits rather than dismiss them by declaring the source of the reports to be subjective because they were undertaken to provide information in this investigation. They add that this is particularly the case in the absence of any contrary information or evidence maligning the credibility of the research conducted.

n221 See GOC Etal Common Issues Case Brief at 7-16 and 32-33.

Department's Position: We address the Department's assessment of the expert reports on the record in response to the comments in which those expert reports are applicable. See Comments 16, 19, 20, 21, 25, 31, 32, 33, 34, 35, 41, 44, and 45.

Comment 11: Whether the Provision of Stumpage Rights Is a Financial Contribution

The Canadian Parties state that stumpage is neither a good nor a service, but, rather, a right to harvest standing timber on Crown land subject to payment of stumpage charges. They argue that because stumpage rights do not constitute the provision of a good or service, or any of the other enumerated financial contributions in the statute, stumpage rights cannot be treated as a subsidy, as all elements of a subsidy in section 771(5)(B) of the Act are not met. n222

n222 Id. at 85-86.

Department's Position: We find the Canadian Parties' argument that provincial governments are not providing standing timber (a good), but, rather, are merely granting a right to harvest standing timber, to be unpersuasive. The Department thoroughly addressed this issue in the prior CVD lumber proceedings, including, most recently, in Lumber IV. As preliminarily discussed, n223 in Lumber IV, the Department found that the ordinary meaning of "goods" is broad, encompassing all "property or possessions" and "saleable commodities." n224 The Department found that "nothing in the definition of the term "goods' indicates that things that occur naturally on land, such as standing timber, do not constitute "goods.'" n225 The Department further found that, to the contrary, the term includes "… growing crops and other identified things to be severed from real property." n226 The Department also found that the primary purpose of the tenures and supply guarantees granted under the provincial stumpage systems was to provide lumber producers with standing timber. Thus, the Department determined in Lumber IV that, regardless of whether the provinces were supplying standing timber or making it available through a right of access, n227 the provinces were providing standing timber. n228 We concluded that our finding was supported by the fact that the provinces collect stumpage fees based on the volume of standing timber harvested under tenures and supply guarantees. Lumber producers are charged a set price per cubic meter of timber (C$/m3). Thus, the transaction between a provincial government and a lumber producer who harvests the timber is a sale of standing timber.

n223 See PDM at 24-25.

n224 See Preliminary Results of 1st AR, 69 FR at 33204, 33213, unchanged in Final Results of 1st AR IDM at 8-9.

n225 Id.

n226 Id.

n227 In Lumber IV Final Determination, the Department found that "property" includes "the right to possess, use, and enjoy a determinate thing (either a tract of land or a chattel). . . [and] [a]ny external thing over which the rights of possession, use, and enjoyment are exercised. … In its widest sense, property includes all a person's legal rights of whatever description." Therefore, even assuming arguendo that the provinces are providing stumpage in the form of a right to harvest standing timber, section 771(5)(B)(iii) of the Act applies. See Lumber IV Final Determination IDM at Provincial Stumpage Programs Determined To Confer Subsidies - Financial Contribution.

n228 See Preliminary Results of 1st AR, 69 FR at 33204, 33213, unchanged in Final Results of 1st AR IDM at 8-9.

We find that neither the argument from the Canadian Parties nor information on the record of this investigation justifies a different conclusion. Therefore, consistent with Lumber IV, as well as the Department's findings in other CVD proceedings, n229 we determine that the provincial stumpage programs constitute a financial contribution in the form of a good, and that the provinces are providing that good, i.e., standing timber, to lumber producers. As such, we continue to find that the provision of standing timber constitutes a financial contribution provided to lumber producers within the meaning of section 771(5)(D)(iii) of the Act.

n229 See CRS from Russia IDM at Provision of Mining Rights for LTAR, where the Department determined that the Government of the Russian Federation's sale of mining rights constitutes a financial contribution in the form of a provision of a good within the meaning of section 771(5)(D)(iii) of the Act. See also HRS from India 2006 AR IDM at 19-20; see also Tetra from the PRC IDM at 25.

Comment 12: Whether Evidence Establishes No Market Distortion and Tier-One Benchmarks Should Be Applied

The Canadian Parties argue that the provinces submitted valid tier-one benchmarks in their jurisdictions which should be used to determine whether stumpage confers a benefit to the lumber producers. n230 They claim that expert reports also on the record, which are not refuted by the petitioner, indicate a lack of market distortion and, thus, there is no reason to go outside each province for a benchmark. They further argue that, as the Department recognized in SC Paper from Canada - Expedited Review, government involvement in a market, on its own, is not sufficient to establish that the market is distorted. n231 However, instead of following this practice, the Canadian Parties assert that the Department preliminarily relied on government "majority" or "substantial portion" for rejecting tier-one benchmarks in each of the provinces. n232 They argue that a finding of distortion cannot rest on government predominance in the market.

n230 See GOC Case Brief at 17-34.

n231 See SC Paper from Canada - Expedited Review IDM at 49, where the Department stated that it "does not apply a per se rule that a government's majority market share equates to government distortion. Rather, the Department will consider all relevant factors or measures that may distort a market."

n232 See PDM at 27-42.

The petitioner rebuts stating that the Department's policy is to reject potential tier-one benchmarks where there is reason to conclude that the government's involvement in the market distorts the price. n233 The petitioner states that Crown timber makes up the majority of the softwood timber harvest in the provinces at issue. The petitioner adds that, while the Department does not presume that any specific percentage of government market share leads to a conclusion that private prices may be distorted, the government's market share is relevant evidence of the extent of government influence over the market.

n233 See Petitioner Rebuttal Brief at 8-12.

Department's Position: We address the Department's findings on provincial market distortion and the viability of tier-one benchmarks in those jurisdictions in response to the specific arguments made by the provinces themselves. See Comments 16, 18, 28, 31, and 35.

Comment 13: Whether the Department Must Compare Average Benchmark Prices to Average Transaction Prices

In the Preliminary Determination, the Department calculated respondents' benefit from the provision of stumpage for LTAR by, generally, calculating species-specific monthly average unit benchmark prices, which we compared to the respondents' purchases of Crown-origin standing timber of that species during that month. n234 For purchases of stumpage in British Columbia and Quebec, we aggregated the benchmark price data on a species-specific annual average basis, rather than a monthly basis, and compared that benchmark to the respondents' POI purchases of Crown-origin standing timber of that species. n235 For purchases of Crown-origin stumpage in Alberta, we compared each respondent's Crown stumpage purchases by annual average prices by species to the annual average Nova Scotia benchmark by species. n236 For purchases of Crown-origin stumpage in Ontario, we compared Resolute's individual purchases of Crown-origin SPF to the monthly price of SPF sawlogs and studwood in the Nova Scotia benchmark. n237 For purchases of stumpage in New Brunswick, we compared reported net payments for individual New Brunswick Crown purchases to the monthly benchmarks rates calculated for each grade and species based on the company's Nova Scotia private purchases. n238

n234 See PDM at 54-56.

n235 Id.

n236 See, e.g., West Fraser Preliminary Calculation Memorandum at 4.

n237 See Resolute Preliminary Calculation Memorandum; see also PDM at 56.

n238 See JDIL Preliminary Calculation Memorandum at 3.

The GOC argues that the Department's ***regulations*** and the Act direct the Department to determine whether the respondent companies received "a benefit" from the government's provision of"goods or services." n239 The GOC asserts that, in order to calculate a single benefit for the provision of"goods," the Department must consider the overall, i.e., average, government price in its LTAR calculations. The Department's ***regulations*** require that "the government price" be compared to a "market-determined price" or "a world price." n240 The GOC asserts that, while there is nothing in the ***regulations*** that specifically requires that the market-determined benchmark "price" or "world price" be based on an average, the Department has typically used average prices as benchmarks in its LTAR comparisons, including in this case. n241 Thus, the GOC argues, the Department should use a single, weighted average "all species" benchmark to compare with a single, weighted average "all species" government price, or, if the Department determines to continue using a species-specific benchmark, it should include "in the final benefit calculation any "negative' benefits determined for any individual species." n242 The GOC also suggests that the Department could use "the lowest market-determined or world transaction-specific price as the benchmark, instead of a benchmark based on the average of many transactions." n243

n239 See section771(5)(E)(iv) of the Act and 19 CFR 351.511.

n240 See GOC Etal Common Issues Case Brief at 80 (citing 19 CFR 351.511(a)(2)(i), (ii)).

n241 Id. at 1-80.

n242 Id. at 1-81; see also GBC Case Brief at 1-81.

n243 See GOC Etal Common Issues Case Brief at81.

JDIL argues that the use of a "transaction-to-average" price comparison is distortive and inconsistent, and unsupported by the record. For the final determination, JDIL asserts that the Department should compare weighted-average POI prices and include all Crown transactions in the calculation of the Crown weighted-average prices, including those with negative quantities. n244

n244 See JDIL Case Brief at 22-24.

The petitioner rebuts the GOC, asserting that the Department should not depart from a species-specific benchmark because the GOC has not provided a basis for the Department to depart from its previous findings either as a factual or legal matter. n245 Furthermore, the GOC's proposal to the use of the lowest market-determined or world transaction-specific price as the benchmark has been previously rejected by the CIT. n246

n245 See Petitioner Rebuttal Brief at 80.

n246 Id. at 80-81 (citing RZBC Group (emphasis added) see also Chevron v. Nat'l Res. Def Council ("[I]f the statute is silent or ambiguous with respect to [a] specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute.")).

Department's Position: The GOC has not provided a basis for the Department to depart from the methodology used in the Preliminary Determination to calculate the respondents' benefit from the provision of stumpage for LTAR as either a factual or legal matter.

As the GOC recognizes, the Department's preference is to compare the prices of individual transactions with the government to monthly average benchmark prices, where possible. n247 In making our determination regarding what comparison methodology is most appropriate, the Department considered the specific stumpage data collected and reported by the respective provincial governments and the level of detail of such data within the context of the provincial stumpage regimes. Where a comparison of individual transactions to monthly average benchmark prices was not possible, the Department developed methodologies that best adhered to the Department's preference. n248

n247 See GOC Etal Common Issues Case Brief at 82; see also SC Paper from Canada - Expedited Review IDM at Comment 25; see also OCTG from the PRC Review IDM at Comment 7; see also Sinks from the PRC IDM at Comment 21.

n248 For example, for the BC respondents, by relying on a timbermark-based approach and further disaggregating by species in the BC stumpage calculations, the Department conducted its calculations on the basis that is as close to a transaction-specific analysis as possible given the available record evidence.

The GOC has provided no basis for deviating from the Department's methodological choices here. The GOC argues that to determine the overall benefit conferred under section 771(5)(E) of the Act, the Department must calculate a "singular "benefit' . . . based on the provision of the plural "goods' or "services,' as opposed to "a good' or "a service.'" Specifically, the GOC argues that the Department must determine "the overall benefit derived from all government sales of the good." n249 The Department correctly calculated the "overall" benefit, because a benefit is either conferred or not conferred; there is no such thing as a "negative" benefit under the Act. n250

n249 See GOC Etal Common Issues Case Brief at 79.

n250 See, e.g., CVD Preamble, 63 FR at 65361 ("[I]f there is a financial contribution and a firm pays less for an input than it would otherwise pay in the absence of that financial contribution (or receives revenues beyond the amount it otherwise would earn), that is the end of the inquiry insofar as the benefit element is concerned"); see also Comment 15of this IDM, below, where we discuss this issue in greater detail.

The GOC has acknowledged that "… there is nothing in the ***regulations*** that specifically requires that the market-determined "price' or "world price' be based on an average.. ," n251 Furthermore, the GOC has not identified any specific distortions resulting from the use of transaction-specific prices in the Preliminary Determination. Therefore, we find that there is insufficient evidence to support a change in calculation methodology to rely on average prices for the final determination.

n251 See GOC Etal Common Issues Case Brief at 80.

Furthermore, with respect to the GOC's argument that the Department could use the lowest market-determined transaction-specific prices as the benchmark, the CIT has stated,

[T]he law requires Commerce to measure benefit, or the adequacy of

remuneration, "in relation to prevailing market conditions." In other

words, remuneration for a subsidized input is "adequate" if it conforms

to prevailing market norms.

Without guidance on the matter, it was reasonable for Commerce to equate

"prevailing market conditions" with average market conditions. [Black's

Law Dictionary] defines the verb "to prevail" as "to be commonly

accepted or predominant." And when you take an average, all you are doing

is finding the predominant or typical case within a sample. So when

Commerce averages country-level prices under the tier-two method, it is

doing just what the statute commands: It is finding the prevailing world

price for the subsidized input and using that to measure the adequacy of

remuneration. The court sees nothing unreasonable in this approach…

By definition, the lowest input values are always less than prevailing or

average prices. So even if penny-pinching producers buy their inputs from

the cheapest sellers, that does not mean Commerce must use the lowest

input values to make its benchmarks. n252

n252 See [*RZBC Group, 100 F. Supp. 3d at 1307.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GNP-NFV1-F04B-W010-00000-00&context=)

We find the Court's reasoning persuasive here, including with respect to tier-one and tier-three benchmarks.

In arguing for the use of average prices, the GOC also asserts that the use of average prices is necessary to account for the fact that some provinces price stumpage by the "stand as a whole," which is one of the "conditions of… sale" that the Department must consider in its analysis. n253 See Comment 23 regarding the Department's position on the issue of whether to consider the "stand as a whole."

n253 See GOC Etal Common Issues Case Brief at 80 (citing section 771(5)(E) of the Act).

With respect to the GOC's and JDIL's argument that the Department should include so-called "negative" benefits in its LTAR calculations, we address this in Comment 15. As we explain there, a credit for transactions that did not provide a subsidy benefit is not an adjustment permitted under section 771(6) of the Act and is inconsistent with the Department's practice. n254

n254 See Lumber NSR IDM at Comment 6; see also Drill Pipe from the PRC IDM at Comment 3; see also OCTG from the PRC IDM at Comment 14.

Comment 14: Whether the Department Must Conduct a Pass-Through Analysis

Citing prior Federal Circuit and WTO decisions, the GOC argues that the Department must conduct a pass-through analysis where the harvester of softwood timber sells logs to an unrelated softwood lumber producer. The GOC asserts that the Department should omit from its benefit calculation any transactions between unrelated producers of the input product and producers of the subject merchandise. n255

n255 See GOC Etal Common Issues Case Brief at 83-85.

The petitioner argues that the GOC's arguments are without merit as the Federal Circuit has held that WTO decisions are not binding on the United States. n256 Further, the petitioner states that Delverde and Allegheny Fed. Circuit, as cited by the GOC, addressed the issue of"pass through" in the context of a change in ownership, which is not at issue here. n257 Finally, the petitioner asserts that the Act is clear: "the determination of whether a subsidy exists shall be made . . . without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists . . . " n258

n256 See Petitioner Rebuttal Brief at 81-82.

n257 Id. at 81-82.

n258 See section 771(5)(C) of the Act (emphasis added).

Department's Position: The GOC argues that the Department must conduct a pass-through analysis and omit from its benefit calculation for the stumpage for LTAR programs any log transactions between the respondent firms and unaffiliated log harvesters. The Department determines that a pass-through analysis is not relevant to whether Crown-origin standing timber was provided for LTAR. Therefore, we disagree that the Department is required to conduct such an analysis in this investigation.

A pass-through analysis is only required if the benefit consists of Crown-origin logs that the respondent firms acquired from third parties via arm's length transactions. However, that fact pattern is not present in this investigation. In the Primary QNR, the Department requested that the respondent firms report the volume and value of species-specific sawlogs that they acquired, in the form of stumpage, from Crown lands. n259 In British Columbia, there are various ways in which the GBC sells Crown-origin standing timber. For example, respondents not only reported transactions in which they themselves harvested Crown-origin standing timber and paid stumpage dues to the GBC, but also transactions in which they paid a price to a separate tenure holder for the right to harvest Crown-origin standing timber located inside that holder's tenure area. In the Preliminary Determination, we included both types of transactions in our benefit calculations and have continued to do so in the final determination. We find that in both types of stumpage purchase transactions, there is a direct financial contribution from the GBC to the respondents insofar as the GBC provides the good (standing timber) directly to the respondent firms. Thus, for the provision of stumpage for LTAR programs, the benefit in the Department's company-specific subsidy calculations consists solely of Crown-origin standing timber and does not consist of logs. There is no need to consider in the context of the provision of stumpage for LTAR program whether a benefit was conferred upon the respondent firms' purchases of logs.

n259 See GBC Primary QNR Response, Part 2 at 7 (Excel Tables 1.1 through 6.2).

The GOC cites Delverde, Allegheny Fed. Circuit and a WTO Appellate Body decision in which the WTO Appellate Body has "requir[ed] a pass-through analysis in circumstances in which a subsidy is received by a producer of an input, and the investigated product is different." n260 The Department disagrees that these citations are relevant to the instant investigation.

n260 See GOC's Case Brief at 83-85 (citing Delverde, Allegheny Fed. Circuit).

First, the Federal Circuit has held that "WTO decisions are "not binding on the United States, much less this court.'" n261 The Department's determination here is governed by U.S. law. U.S. law is consistent with the United States' international obligations, and the Department has acted in accordance with U.S. law. Second, we agree with the petitioner that Delverde and Allegheny Fed. Circuit addressed the issue of"pass through" in the context of a change in ownership, which is an issue not present in this investigation. n262 Specifically, in Delverde, the Federal Circuit addressed Delverde's purchase of certain corporate assets from a private company that had previously received several nonrecurring countervailable subsidies from the Italian government. n263 Delverde asserted that, despite evidence demonstrating that Delverde paid fair market value for those assets in an arm's length transaction, the Department applied the spin-off methodology n264 and levied countervailing duties against Delverde, based on a pro rata portion of the nonrecurring subsidies that were granted to the former owner. n265 Similarly, in Allegheny Fed. Circuit, the Federal Circuit addressed the privatization of a company through the sale of ownership shares. n266 Because the issue of whether subsidies pass through from a company subject to a CVD order to a successor-in-interest pursuant to a change in ownership is not implicated here, the Department finds that the facts in Delverde and Allegheny Fed. Circuit are inapposite in this investigation.

n261 See Corus Staal BV (citing Timken Co.).

n262 See [*Delverde, 202 F.3d at 1363*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YHV-X7X0-003B-90V3-00000-00&context=) (stating that "Delverde and Delverde USA, Inc. sued in the Court of International Trade, arguing that the Commerce's methodology, viz, its assumption that a pro rata portion of the former owner's nonrecurring subsidies "passed through' to Delverde as a consequence of the sale, was erroneous and inconsistent with the Tariff Act as amended by the URAA.") (emphasis added); see also [*Allegheny Fed. Circuit, 367 F.3d at 1343-47*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CCK-PSW0-003B-9068-00000-00&context=) (examining pass-through in context of Usinor's privatization, involving the transfer of ownership through sales of stock).

n263 See [*Delverde, 202 F.3d at 1362.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YHV-X7X0-003B-90V3-00000-00&context=)

n264 See the General Issues Appendix to Steel from Austria', see also Inland Steel Bar Co.

n265 See [*Delverde, 202 F.3d at 1362.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YHV-X7X0-003B-90V3-00000-00&context=)

n266 See [*Allegheny Fed. Circuit, 367 F.3d at 1343-47.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CCK-PSW0-003B-9068-00000-00&context=)

Finally, to the extent that the Canadian Parties' comments concern the respondent firms' purchases of logs, we have addressed those comments in the context of the LER program. See Comment 46, where we discuss how such log purchases provide a financial contribution and confer a benefit under the statute.

Comment 15: Whether the Net Benefit Calculation for Stumpage for LTAR is Correct

In the Preliminary Determination, the Department found that the stumpage rates charged for Crown-origin standing timber by the provincial governments in Alberta, BC, New Brunswick, Ontario, and Quebec constitute the provision of a good for LTAR. n267 The GOC, GBC, Tolko and JDIL disagree with the Department's benefit calculation methodology. n268 Specifically, the parties argue that the Department used a species-specific benchmark but did not account for any "negative benefits" in the ultimate benefit calculation, and that the Department should do so in the final determination if it does not develop a single weighted-average all species benchmark to compare with a single weighted-average all species government price. The petitioner asserts that the Department should not depart from the methodology used in the Preliminary Determination. n269

n267 See PDM at 19.

n268 See GOC Etal Common Issues Case Brief at81; see also GBC Case Brief at 77; see also Tolko Case Brief at 31; see also JDIL Case Brief at 24-26.

n269 See Petitioner Rebuttal Brief at 79-81.

Department's Position: In a subsidy analysis, a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions. The adjustment the GBC, Tolko and JDIL are seeking is essentially a credit for transactions that did not provide a benefit - this is an impermissible offset, contrary to the Act, and inconsistent with the Department's practice. n270

n270 See Final Results of 2nd AR IDM at Comment 43; see also e.g., Lumber NSR IDM at Comment 6; see also Drill Pipe from the PRC IDM at Comment 3; see also OCTG from China IDM at Comment 14; see also SC Paper from Canada - Expedited Review IDM at Comment 26.

Although Tolko and the GBC rely on the NAFTA June 7, 2004 Panel decision in Lumber IV n271 to support their contention that the Department must allow for "negative benefits" as an offset, that decision is not binding precedent on the Department. n272 Thus, the parties' reliance on the panel decision for the assertion that the Department must account for "negative benefits" is misplaced.

n271 See NAFTA June 7, 2004 Panel Decision.

n272 See Algoma Steel Corp. (finding that individual judges on the Court of International Trade are not bound by the decisions of another); see also NAFTA Art. 1904.3 (providing that panels apply "the general legal principles that a court of the importing party otherwise would apply to a review of a determination of the ***competent*** investigating authority").

As we stated in Lumber IV, the Act defines the "net countervailable subsidy" as the gross amount of the subsidy less three statutorily prescribed offsets: (1) the deduction of application fees, deposits or similar payments necessary to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy. n273 Both Congress and the courts have confirmed that these are the only offsets the Department is permitted to make under the statute. n274 Offsetting the benefit calculated with a "negative" benefit is not among the enumerated permissible offsets.

n273 See section 771(6) of the Act.; see also e.g. Final Results of 2nd AR IDM at Comment 43.

n274 See S. Rep. No. 96-249, at 86 (1979), reprinted in 1979 U.S.C.C.A.N. 381, 472 ("[t]he list is narrowly drawn and is all inclusive."); see also Kajaria Iron Castings ("we agree that [*19 U.S.C. § 1677*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:4YF7-GNX1-NRF4-4390-00000-00&context=)(6) provides the exclusive list of permissible offsets ...."); see also Geneva Steel (explaining that section 771(6) contains "an exclusive list of offsets that may be deducted from the amount of a gross subsidy").

Furthermore, the Preamble clarifies that this result would be inconsistent with the purpose of a benefit inquiry:

[I]f there is a financial contribution and a firm pays less for an

input than it would otherwise pay in the absence of that financial

contribution (or receives revenues beyond the amount it otherwise would

earn), that is the end of the inquiry insofar as the benefit is

concerned. n275

n275 See CVD Preamble, 63 FR at 65361.

Therefore, if the Department determines that a province has sold timber for LTAR, a benefit exists and the inquiry ends. We will not "reduce" the amount of that benefit by offsetting for purported "negative" benefits. Thus, we have made no modifications to the final determination calculations regarding alleged "negative" benefits. Moreover, as discussed in Comment 20, we have not compared average benchmark prices to average transaction prices.

Comment 16: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

In the Preliminary Determination, the Department found that, due to government predominance in the GOA's market for standing timber, private stumpage prices in Alberta could not be considered independent of the Crown stumpage prices. n276 Further, the Department found that the fact that a small number of tenure-holding companies dominated the Crown-origin and private-origin standing timber harvests during the POI, coupled with the fact that a supply "overhang" exists in the province, means that the prices dominant tenure-holders would be willing to pay for private-origin standing timber would be limited by the costs of obtaining standing timber from their own Crown tenures. On this basis, the Department found that private stumpage prices were effectively determined by Crown-stumpage prices, and that the TDA benchmark prices proposed by the parties were unusable as a benchmark. n277

n276 See PDM at 28-30.

n277 Id.

Canfor, the GOA, Tolko, and West Fraser challenge the Department's preliminary decision to disregard as a valid tier-one benchmark the "implied value of standing timber" derived by subtracting the average cost of harvesting, hauling and in-kind stumpage costs from an average of actual observed log prices in Alberta for fiscal year 2015, based on TDA survey prices. n278 These parties argue that TDA survey prices are collected for reasons not associated with this investigation, and are for logs that are directly comparable to the Alberta Crown timber under investigation. n279 The GOA, Canfor, and West Fraser argue that TDA prices reflect private arms-length transactions for logs between numerous vendors and purchasers and are representative of prevailing market conditions in Alberta, and that the Department and a NAFTA panel had previously recognized TDA survey prices. n280 The GOA and West Fraser argue that the Department should have examined Alberta's private log market, which, in their view, produces prices that are useable as a tier-three benchmark for Crown stumpage, rather than mistakenly focusing on the impact of Crown stumpage rates on the private stumpage market. n281

n278 See GOA Case Brief at 8-10 (citing the Brattle Report at 4, and their suggested calculation is described in GOA Rebuttal NFL Submission 1, Part 1 at Exhibit AB-S-113 at 23-24), and 20-21; Canfor Case Brief at 45-46 (adopting GOA case brief); West Fraser Case Brief at 8-15; Tolko Case Brief at 33-34 (adopting GOA case brief).

n279 Id.

n280 See GOA Case Brief at 10-11 (citing Lumber IV Remand at 14; and the NAFTA June 7, 2004, Panel Decision at 24); see also West Fraser Case Brief at 8-9, and 16-17; see also Canfor Case Brief at 44-45.

n281 See GOA Case Brief at 13-14; see also West Fraser Case Brief at 10-11.

The GOA and West Fraser argue that neither Crown policies nor market conditions distort the log market in Alberta such that TDA log prices cannot be used as a benchmark because (1) Alberta has a highly ***competitive*** market for logs (based on the Herfindahl-Hirschman (HHI) method of determining market concentration); n282 (2) the "supply overhang" for standing timber in Alberta indicates that Crown stumpage dues are excessive and the timber is uneconomical to harvest, which are legally irrelevant because unused allocated Crown standing timber cannot "distort" private party log prices; n283 and (3) TDA transaction data are market-determined log prices that do not reflect and are not depressed by any distortion that may exist in the stumpage market. n284 With respect to the first point, the GOA and West Fraser also argue that the distribution or concentration of buyers in a market is a "prevailing market condition" which cannot be used to support a finding that the market for stumpage is distorted. n285 With respect to the second point, West Fraser argues that in calendar year 2015 it harvested almost all of its AAC, and explained its reasons for not harvesting a certain amount of its AAC. n286

n282 See GOA Case Brief at 15-16; see also West Fraser Case Brief at 13.

n283 See GOA Case Brief at 17-19 citing GOC Etal Primary QNR Response, GOC vol. VI, Exhibit GOC-STUMP-5, Economic Analysis of Remuneration for Canadian Crown Timber: Are In-Jurisdiction Benchmarks Distorted by Crown Stumpage? (Kalt Report - In-Jurisdiction Benchmarks); see also West Fraser Case Brief at 14-15.

n284 See GOA Case Brief at 20-21; see also West Fraser Case Brief at 11-13.

n285 See GOA Case Brief at 17; see also West Fraser Case Brief at 14.

n286 See West Fraser Case Brief at 15.

Finally, the GOA contends that the appropriate calculation for determining whether stumpage was provided for LTAR begins with log prices provided in the TDA Log Transaction Overview. n287 In the GOA's view, the Department should adjust those prices to remove costs including harvesting and hauling, in-kind stumpage-related expenses, and imputed profit. n288 The GOA concludes that this calculated value should be compared to total Alberta timber dues, including holding and protection charges, FRIAA dues, and other fees and charges mandated by the Province and paid by the companies. n289

n287 The suggested calculations are detailed in GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 7-8. Collected data segregates stumpage and non-stumpage costs.

n288 See GOA Case Brief at 22-23.

n289 Id. at 23.

The petitioner supports the Department's Preliminary Determination that the prices resulting from log sales between unrelated parties in Alberta do not provide a useable benchmark. n290 The petitioner argues that the TDA data cannot serve as a benchmark because such transactions are not independent of the provision of Crown timber to Alberta sawmills. n291 Specifically, the petitioner states that 60 percent of the TDA transaction volume cannot be considered independent from the provision of Crown timber to Alberta sawmills because those transactions are for logs harvested from Crown land for which the buyer paid stumpage fees to the GOA. n292 The petitioner also states that until that stumpage has been paid, in accordance with section 32 of the Alberta Forests Act, the Crown maintains a lien against the timber that has priority over all other encumbrances; therefore the majority of logs in the TDA transaction data are Crown logs which have not yet been fully provided to the sawmills because the stumpage payments are outstanding at the time of the log sale. n293 The petitioner also states that Crown logs, like those in question, are subject to the export prohibition of Section 31of the Alberta Forests Act. n294

n290 See Petitioner Rebuttal Brief at 12-13.

n291 See Petitioner Rebuttal Brief at 12-13.

n292 Id.

n293 See Petitioner Rebuttal Brief at 13.

n294 Id.

In response to the GOA's argument that the level of concentration in the Alberta lumber-producing industry is far below the level that would draw ***antitrust*** scrutiny, the petitioner contends that the Department did not base its distortion finding on a conclusion that there is a monopsony of Crown and private timber purchasers; rather, the Department relied on the dominant role of the Crown as supplier to virtually all purchasers of the logs that the GOA contends provide usable tier-one pricing data. n295 Second, the petitioner argues that whether unused allocation is uneconomical to harvest does not undermine the Department's conclusion that private log sellers must ***compete*** on some level with volumes available to the sawmills at government-determined prices, and that this fact in turn affects demand and price. n296 Finally, the petitioner argues that in relying on the Brattle Report, which purports to demonstrate that log prices in Alberta cannot under any circumstances be distorted by prices for Crown timber, the GOA's argument is inconsistent with the findings of the Stoner and Mercurio Report. n297

n295 Id. at 14.

n296 Id.

n297 Id. at 14-15, citing GOC Etal Primary QNR Response, GOA vol. IV, Exhibit AB-S-24, Assessment of an Internal Benchmark for Alberta Crown Timber (Brattle Report), and Petition Exhibit 105, Economic Analysis of Price Distrotions in a Dominant-Firm/Fringe Market, (Stoner and Mercurio Report).

Department's Position: Under 19 CFR 351.511(a)(2), the Department measures the remuneration received by a government for goods or services against comparable benchmark prices to determine whether the government provided goods or services for LTAR. These potential benchmarks are listed in hierarchical order by preference: (i) market-determined prices from actual transactions of the good within the country under investigation (e.g actual sales, actual imports, or in certain instances, actual sales from ***competitively*** run government auctions) (tier one); (ii) world market prices that would be available to purchasers in the country under investigation (tier two); or (iii) an assessment of whether the government price is consistent with market principles (tier three).

Therefore, our first preference for determining the adequacy of remuneration is to compare the government price to a market-determined price ""for the good or service resulting from actual transactions in the country in question." n298 Because the good at issue in this investigation is stumpage, a market-determined stumpage price is the preferred benchmark under our regulatory hierarchy. The TDA survey prices that the GOA, Canfor, West Fraser, and Tolko propose using as a benchmark are, by their own recognition, primarily for a different product, i.e., harvested logs, that is downstream from standing timber. As such, the TDA survey prices are not a tier-one benchmark "for the good or service" we are investigating. Rather, even assuming they were consistent with market principles (which we do not find), such prices would only be appropriate as a benchmark under tier three of our regulatory hierarchy (19 CFR 351.511(a)(2)(iii)).

n298 See 19 CFR 351.511(a)(2)(i) (emphasis added).

In the Preliminary Determination., we determined that available prices stemming from purchases of private stumpage in Nova Scotia, i.e., the NS Survey prices, satisfied the regulatory requirements for a tier-one benchmark to measure the adequacy of remuneration for Crown stumpage in Alberta. n299 As discussed in Comments 39-43, we continue to find that NS Survey prices are the appropriate tier-one benchmark for Crown stumpage in the province. Consequently, given the hierarchical approach for benchmark selection under 19 CFR 351.511(a)(2), it is not necessary for the Department to examine the suitability of or rely upon non-tier-one benchmark data, such as the TDA survey prices in Alberta, which would fall under the third tier of the LTAR benchmark hierarchy set forth inl9 CFR 351.511(a)(2).

n299 See Preliminary Determination IDM at 46.

Nonetheless, as set forth below, we disagree with the parties' contentions that the TDA log prices reflect market prices that are consistent with market principles pursuant to 19 CFR 351.511(a)(2)(iii) that would be useable as a tier-three benchmark.

We explained in the Preliminary Determination that we would continue to evaluate TDA data during this investigation. n300 Upon further evaluation, we find that the TDA data represent a survey of private log transactions, and include a very small volume of private stumpage transactions, and many TDA salvage transactions. n301 TDA salvage transactions occur when Alberta energy and utility companies receive concessions on Crown land that is under timber management by tenure holders, and these concessions result in the removal of land from timber management. The non-timber concession holders negotiate with the timber tenure holders to reimburse the latter for their sunk costs of timber management on the land base removed from timber management. In addition, the non-timber concession holders usually ask the tenure holder to "salvage" timber on the concession land. n302 The Timber Management ***Regulations*** require FMA holders and Timber Quota holders to salvage timber under threat of having the volume charged against its AAC for refusal to do so. n303 TDA survey data are collected by the Alberta Joint Energy/Utility and Forest Industry Management Committee, which has members from all interested industries, to inform the negotiation of the value of the standing timber, in order to facilitate the price negotiations for salvage, sunk land-use costs, and reforestation. n304 Negotiations for compensation for standing timber "damage" (i.e., the timber removed from tenure production by the granting of the non-timber concession on tenure land) are private and do not include the government except in its capacity as an ex officio member of the Joint Management Committee. n305

n300 See Preliminary Determination, and the accompanying decision memorandum at 30.

n301 See GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 3. (96.9 percent of transactions in FY2015 occurred at the mill gate, 2.8 percent involved decked timber, and the remaining 0.3 percent were for standing timber).

n302 Id. at 7.

n303 See GOA Primary QNR Response, Exhibit AB-S-15, at section 153(1).

n304 See GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 4, 7-8.

n305 See GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 1-2. (the GOA is an ex officio member of the Joint Management Committee).

If we were evaluating TDA survey data under tier three of our benchmark hierarchy, we would examine whether these data represent prices that are consistent with market principles. Our consideration of the appropriateness of TDA survey data as a tier-three benchmark indicates the following: first, the salvage timber is cut without regard to the tenure holder's approved cutting plan, and therefore the prices are not a fair representation of the price of mature standing timber; n306 second, TDA transaction data contain "salvage" transactions of logs that were not offered for sale on the open market ' the tenure holder is required to take part in salvage transactions at the direction of the non-timber concession holder; n307 third, 60 percent of the transactions by volume are sales of Crown-origin logs, for which Crown stumpage was paid -and thus these transactions are unreliable insofar as they would yield a circular comparison of Crown stumpage prices with a benchmark that also included Crown stumpage n308; and fourth, timber in Alberta is subject to an export prohibition under Section 31of the Alberta Forests Act, n309 which prevents log sellers from seeking the highest prices in all markets and, thus, artificially creates downward pressure on log prices throughout the province.

n306 See GOA Verification Report at 11-12. See also GOA Verification Report at 13.

n307 See GOA Verification Report at Exhibit AB-VE-6, Attachment 3.

n308 The TDA data set contains 60 percent transactions by volume for which Crown stumpage was paid, and 40 percent private stumpage transactions. See GOC Etal Primary QNR Response, Errata 1, Revised Exhibit AB-S-41, at 4 (The total of "Volume Reported with Additional Stumpage," 1,112,500 m3 divided by 1,872,800 m3in column "April 27, 2016 Letter (FY2015)). Further, these transactions are encumbered by a Crown lien which has priority over all other encumbrances, until Crown stumpage is paid; thus, title to harvested logs does not pass to the buyer until Alberta Timber Dues are paid in full. See GOA Primary QNR Response at Exhibit AB-S-14, Section 32. This encumbrance creates risks for both the tenure holder and the buyer which would not exist in an open market transaction.

n309 See Petitioner Rebuttal Brief at 13.

For the foregoing reasons, in this final determination, we find that the TDA transaction prices are not useable as either a tier-one or a tier-three benchmark to measure the benefit conferred by the GOA's provision of stumpage for LTAR. Because we are not relying on these data as a benchmark, we need not address the GOA's suggestions regarding how the Department could adjust this benchmark to account for respondents' costs. n310

n310 The Department discusses the parties' arguments regarding adjustments to the Nova Scotia benchmark in Comment 42.

The GOA and West Fraser argue that the three points of our stumpage distortion analysis, as presented in the Preliminary Determination, are irrelevant to evaluating the log prices reflected in the TDA survey data. We have not made a determination concerning distortion in the Alberta log market. The GOA and West Fraser's arguments concerning distortion presupposed that we would consider TDA survey data as a tier one benchmark, however we have not done so. Therefore, these arguments are misplaced. As a result, we need not evaluate whether log prices are also distorted as a result of the dominance of the government in the market for stumpage.

Moreover, the GOA, Canfor, Tolko, and West Fraser have not provided any basis to alter our preliminary determination that private prices for stumpage in Alberta are distorted. TDA survey data do contain a very small volume of private stumpage transactions (0.3 percent of the total volume), n311 which aside from being relatively inconsequential as compared to the total volume of sales and unusable as a tier-one benchmark, are not "market-determined," for the reasons stated in the Preliminary Determination, n312 This determination was based on three findings that we continue to rely upon in the final determination. First, in the Preliminary Determination, for Alberta in FY 2015-2016, we calculated that Crown-origin timber accounted for 98.48 percent of the harvest volume, while the harvest volume of non-Crown-origin timber accounted for the remaining 1.52 percent. n313 We continue to find those figures accurate for purposes of this final determination, and reflective of near complete Crown dominance of the market for standing timber in Alberta. Where the market for a particular good or service is so dominated by the presence of the government, the remaining private prices in the country in question cannot be considered to be independent of the government price. Consequently, the analysis would become circular because the benchmark price would reflect the very market distortion which the comparison is designed to detect.

n311 See GOC Etal Primary QNR Response, Errata 1, Attachment 2A, Corrected Exhibit AB-S-41 at 3. (0.3 percent of transactions in the database were for standing timber.)

n312 See Preliminary Determination and accompanying PDM at 30. (".. .data from the GOA indicate that the harvest of standing timber from private lands is miniscule compared to the volume of standing timber harvested from Crown lands. Further, the relatively small volumes of standing timber harvested from private lands is mostly consumed by tenure-holding sawmills such that non-Crown origin standing timber would "benchmark" off the prices the GOA sets for standing timber in the Crown forest.")

n313 See Preliminary Determination and accompanying PDM at 28 (citing Market Memorandum, at Alberta Attachment, Table 3).

Second, as in the Preliminary Determination, we continue to find that a small number of tenure-holding companies dominate both the Crown-origin and private-origin standing timber harvests in Alberta, which further ensures that the prices of private-origin standing timber track the prices of Crown-origin timber prices. n314 In particular, we find that the ten largest companies accounted for over 80 percent of the Crown timber allocation and over 81 percent of the Crown timber harvest. n315 Hence, for these companies, private-origin standing timber is a minor, residual source of supply, and sellers of the very small amount of private-origin standing timber in the province would not be in a position to exert market power in their dealings with these companies.

n314 We have made certain changes to the market concentration metrics that we calculated in the Preliminary Determination', these changes do not impact our analysis of this issue. See Alberta Final Market Memorandum, Tables 1.2.1.1, and 1.2.12.

n315 See Alberta Final Market Memorandum, Tables 1.2.1.1. We also found that five firms had a 71 percent concentration in the private stumpage market. See Preliminary Determination and accompanying PDM at 29.

With respect to this second finding, the GOA and West Fraser argue that using concentration ratios to assess market concentration does not accurately measure ***competitiveness*** in the market. Instead, the GOA and West Fraser advocate use of a different metric of market concentration, the HHI, to show that market power is not "concentrated" in the stumpage market in Alberta. However, the GOA and West Fraser support these arguments with a hyperlink to a website, the content of which is not on the record. n316 Because the GOA bases its argument on unsupported statements and its own characterization of non-record evidence, we are not able to meaningfully engage in an analysis of this metric or in an analysis of whether the GOA's calculated outcomes are accurate. Further, we question the relevance of this metric to our analysis. The Department is not seeking to identify market conditions that would be anti-***competitive*** in violation of U.S. or Canadian ***antitrust*** laws. Our analysis examines the features of the sector at issue to consider whether it functions freely and generates market-determined prices. In the instant case, where 143 companies purchased Alberta Crown stumpage, the fact that the top ten companies are allocated 80 percent of the available volume and harvest 81 percent of the Crown harvest, indicates market power concentrations that are meaningful to our analysis when combined with other record evidence. n317

n316 See, e.g., Pasta from Italy 2012 AR and the accompanying IDM at 5-6. ("In the Post-Preliminary Analysis, we noted that a hyperlink to a website, as the GOI submitted in the GOI 5SQR, is not an acceptable response to our questions because a mere citation to a hyperlink does not constitute the provision of information on the record of a proceeding, because information accessible via a hyperlink is subject to change.")

n317 See Alberta Final Market Memorandum, Tables 1.2.1.1, and 1.2.1.2.

The GOA also argues that the Department's reliance in the Preliminary Determination on the fact that a small number of firms dominate both the Crown-origin stumpage market and the private stumpage market, is misplaced, because these two market concentration ratios each reveal nothing about the ***competitive*** nature of the Crown and private markets for stumpage in Alberta. n318 We disagree. These indicators demonstrate that a small number of firms consume most of the total stumpage in the market, and that these market concentrations hinder the potential for sellers of private-origin standing timber to freely negotiate prices. This is especially true where, as we continue to find, dominant purchasers are able to obtain additional supply from their own tenures.

n318 See GOA Case Brief at 16-17.

The GOA also argues that the existing level of concentration or ***competitiveness*** in the Alberta market is a "prevailing market condition," such that the Department cannot rely on this measure to find distortion in market. We disagree with the GOA's interpretation of section 771(5)(E) of the Act. An analysis of whether a proposed benchmark is market-determined must precede any analysis of how to account for prevailing market conditions in a benchmark comparison. Any other interpretation would lead to the absurd result that the Department could never rely on anything other than a tier-one benchmark, regardless of the level of distortion, because such benchmarks would always reflect "prevailing market conditions" in the country of provision. This result would effectively nullify 19 CFR 351.511(a)(2)(ii)-(iii), and is not supported by the language of section 771(5)(E) of the Act. Section 771(5)(E) of the Act identifies relevant "prevailing market conditions" as including "price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Factors such as "marketability" and "transportation," though constituting "prevailing market conditions," are typically not relevant to evaluating whether a particular benchmark is, or is not, market determined.

Third, as in the Preliminary Determination, we continue to find that a supply overhang exists in Alberta such that allocations of Crown stumpage volume are not fully consumed. n319 This supply "overhang" in Alberta indicates that the willingness of tenure-holding sawmills to pay for private-origin standing timber will be limited by their costs for obtaining standing timber from their own tenures. When combined with the fact that the same companies are active in both the Crown stumpage and private stumpage markets, this is further evidence that prices for standing timber from non-Crown sources would mirror the administratively-set prices charged by the GOA on Crown lands.

n319 The revised calculation indicates that harvested volume, divided by allocated volume equals 90 percent, leaving 10 percent unharvested. See Alberta Final Market Memorandum, Table 1.2.2.

With respect to this third finding, the GOA and West Fraser challenge whether the existence of "overhang" in Alberta actually supports the Department's distortion analysis. In particular, the GOA cites to an affidavit from Dan Wilkinson, Director of Markets for the Alberta Forest Products Association, to argue that the supply overhang results from a variety of causes, such as the level of harvesting and transportation costs relative to the downstream price for lumber; decisions of mixed-wood lot holders, who run pulp and oriented strand board mills, to not harvest because it is impractical or uneconomic; First Nations and wildlife habitat considerations; and a fall in demand for oriented strand board and dimensional lumber in the market since the 2007 recession. n320 However, Mr. Wilkinson's statements were generated specifically for purposes of this investigation and are not supported by any evidence or empirical data on the record of this investigation. n321 Furthermore, Mr. Wilkinson does not quantify the extent to which the unused AAC is a result of these factors, and instead only uses general terms such as "mostly" and "partly." n322 Lastly, this affidavit does not account for the fact that on the margin, the tenure holder has access to additional supply from Crown lands that it can harvest rather than going to the private market, not only because there is unused volume allocation during the POI, but also because mills are awarded periodic allotments that span five years. Therefore, the available supply to a particular tenure holder may be even greater in a given year because, in any year of the five-year cut control period, the tenure holder can harvest beyond one-fifth of its five-year allocation, as long as they do not exceed the allocation for the five-year period. n323

n320 See GOA Case Brief at 18 (citing Kalt Report - In-Jurisdiction Benchmarks at 5-9, and Attachment 2.)

n321 See Kalt Report - In-Jurisdiction Benchmarks at Attachment 2.

n322 Id.

n323 See Tolko Verification Report at 8. See also, e.g., GOC Etal Primary QNR Response; see also GOA Primary QNR Response at AB-S-36 (ANC Timber, Ltd.'s FMA - definitions of annual allowable cut, and periodic allowable cut, section 1, item (b), and (n), respectively).

Further, although West Fraser makes the same point that unused AAC is uneconomical to harvest, the evidence upon which West Fraser relies for this proposition is specific to West Fraser's experience and does not speak to the stumpage market, as a whole.

Finally, the GOA also relies on the Brattle Report to argue that the existence of supply overhang is consistent with Crown stumpage rates being too high, rather than too low. n324 In particular, citing the Brattle Report, the GOA asserts that stumpage fees act like a tax, which reduces output by reducing the number of trees that are economical to harvest, and creates a larger overhang than would otherwise exist. n325 As an initial matter, this report was commissioned by the GOA for the purposes of this investigation n326 and as such, carries only limited weight given its potential for bias, with data and conclusions that may be tailored to generate a desired result. Further, whether Crown stumpage prices are too "high" or "low" is not what the Department is attempting to measure in its distortion analysis. Rather, our concern, reflected above, is that private prices are "effectively determined" by Crown stumpage prices, which renders any price comparison circular. Thus, the Brattle Report's conclusions do not inform the Department's analysis of this question.

n324 See GOA Case Brief at 19, citing Brattle Report at 30-32.

n325 Id.

n326 See Brattle Report at 3-6. ("We have been asked by the Government of Alberta (or "the Province') to conduct an economic analysis regarding certain aspects of the allegations that it provides the right to harvest provincially-owned standing softwood timber to lumber producers in Alberta at prices below what would be charged by private owners of timberlands and that these timber sales at allegedly "less than adequate remuneration' constitute a countervailable subsidy.")

Comment 17: Whether the Department Should Use a U.S. Log Benchmark to Compare Respondents' Alberta Stumpage Purchases

In the Preliminary Determination, the Department found that the GOA provided stumpage for LTAR to the respondents with operations in Alberta, by comparing the respondents' stumpage purchases to Nova Scotia's stumpage prices. n327 The respondents argue that the petitioner has previously suggested the Department should use a U.S. log price as the benchmark to compare the respondents' Alberta stumpage purchases. They argue that the Department cannot use a cross-jurisdiction benchmark for determining whether Alberta stumpage is sold for LTAR because the differences in prevailing market conditions significantly affect comparability. They further argue that if the Department uses a cross-border benchmark, the Department must make adjustments to account for these differences in prevailing market conditions. n328 The petitioner did not comment on this issue.

n327 See PDM at 44-46, 52, and 56-57.

n328 See GOA Case Brief at 65-67; see also GOC Etal Common Issues Case Brief at 71-72.

Department's Position: In this final determination, the Department continues to use stumpage prices from Nova Scotia as a tier-one benchmark to compare the respondents' purchases of stumpage from Alberta. See Comment 39, 40, 41, 42 and 43 for a discussion on benchmark prices from Nova Scotia. The Department is not comparing respondents' purchases of stumpage from Alberta to U.S. log prices and, therefore, parties' arguments with respect to this point are moot.

Comment 18: Whether Crown Auctions in British Columbia Generate Valid Market Prices

As detailed in the Preliminary Determination, all Crown-origin standing timber harvested in British Columbia is subject to stumpage fees, which are set based on either the results of government-run auctions (BCTS auctions) or through the MPS. n329 The GBC stated that about 20 percent of Crown harvest is sold through these BCTS auctions. n330 The prices paid for the right to harvest from these auctions provide the basis for the MPS system, which determines the stumpage rates for the remaining Crown timber stands not sold through auction. n331 Although the GBC argued that the BCTS auctions produced valid market prices, in the Preliminary Determination, we found that these prices were not market-determined and, thus, were not appropriate to use as a tier-one benchmark. After considering other potential benchmarks, we ultimately used a tier-three benchmark (delivered log prices from Washington state) in the Preliminary Determination.

n329 Id. at 21.

n330 See GBC Primary QNR Response, Part 1 at BC1-138. However, harvest information verified by the Department indicates that the auction harvest accounted for only 15.4 percent of the total unrestricted softwood BCTS harvest in the province. See GBC Verification Exhibits at VE-6 at 117 (1,827,087 m3 (coast) + 7,421,341 m3 (interior) / 60,177,713 m3 (total)).

n331 Id. at BCI-139.

The GBC, Canfor, Tolko and West Fraser (the Canadian Parties) disagree with the Department's Preliminary Determination and argue that the Department need not conduct a benchmark analysis at all, but if it does, the Department should use BCTS auction prices as a first-tier benchmark in any calculation of stumpage benefits to respondents in British Columbia. Specifically, they argue that these BCTS auctions generate valid market prices delivered from ***competitive***, unrestricted auctions, which in turn set the stumpage prices for the rest of the province. n332 The Canadian Parties assert that the Department's findings otherwise were erroneous and unsupported by the record.333 The petitioner contends, in rebuttal, that the Department was correct in not using BCTS auction prices for tier-one benchmarks in the Preliminary Determination, and should continue not to use these prices in the final determination. n334

n332 See GBC Case Brief at 10-30; see also Canfor Case Brief at 18-20 see also West Fraser Case Brief at 31-36; see also Tolko Case Brief at9-ll.

n333 See GBC Case Brief at 15-28; see also Canfor Case Brief at 18-20; see also West Fraser Case Brief at 31-36; and see also Tolko Case Brief at 9-ll.

n334 See Petitioner Rebuttal Brief at 15-21.

Department's Position: We disagree with the Canadian Parties' arguments that BCTS auction prices should serve as a tier-one benchmark. However, before addressing the arguments in detail, it is important to review the regulatory language with respect tol9 CFR 351.511 ' the provision of a good or service for less than adequate remuneration. Under the ***regulation***, we prefer to measure the adequacy of remuneration using in-country prices as a benchmark, referred to a tier-one benchmark. This tier-one benchmark could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from ***competitively***-run government auctions. However, where it is reasonable to conclude that prices in that market are significantly distorted as a result of the government's involvement in that market, the Department will not use the prices within that market. n335 Therefore, when information on the record indicates that the government is involved in the market, before determining whether it is appropriate to use prices from within that market, the Department must determine whether that market is distorted due to the presence of the government. n336 Once it is determined that the market is distorted by the presence of the government, prices between private parties, import prices, or government auction prices are no longer viable benchmark prices. As we found in the Preliminary Determination, information on this record indicates that the British Columbia stumpage market is distorted because the majority of the market is controlled by the government. Further, log export restraints (which we address separately at Comments 44, 45, 46 and 47) restrict the exportation of logs from the province, which influences the overall supply of logs available to domestic users, and, in turn, suppresses log prices in British Columbia. Therefore, prices within British Columbia, including prices from the BCTS auctions, cannot serve as a benchmark under 19 CFR 351.511(a)(2)(i), and we continue to find that deriving a benchmark pursuant tol9 CFR 351.511(a)(2)(iii) is the appropriate methodology for measuring the extent to which the GBC has provided stumpage for LTAR. Nevertheless, below we address the Canadian Parties' arguments regarding the BCTS auction prices.

n335 See, e.g., CVD Preamble, [*63 FR at 65377.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n336 The CVD Preamble, [*63 FR at 65377,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) refers to situations where the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

In the Preliminary Determination., we found that the prices for standing timber generated by the BCTS auctions were not market-determined, and thus, were not appropriate to use as a tier-one benchmark. Specifically, we found that: (1) a small number of companies dominated the allocation and harvest of standing timber from BC Crown lands; (2) the volume of standing timber allocated by the GBC exceeds the volume harvested (indicating that there is a supply overhang and that stumpage prices in the BCTS auctions are effectively limited by the prices that large tenure holders pay for Crown stumpage on their own tenures); and (3) export restraints created a downward pressure on the price of logs sold in BC, and thus, by extension, the prices in BCTS auctions. On this basis, we preliminarily determined that the prices of Crown-origin standing timber from the BCTS auctions were not market-determined prices from ***competitively*** run government auctions. n337

n337 See PDM at 35-39.

Notwithstanding the Canadian Parties' arguments, we continue to find that the prices generated from the BCTS auctions (and, in turn, the MPS stumpage rates that are calculated using these auction prices for the remainder of the province) do not produce valid market-determined prices. However, based on interested parties' comments, we have made certain changes to our findings in the Preliminary Determination as set forth below.

As noted above, we found in the Preliminary Determination that a small number of companies dominated the allocation and harvest of standing timber, and that there was a significant supply "overhang" in the province (i.e., the volume of Crown standing timber harvested was significantly less than the volume of Crown standing timber allocated by the GBC for harvest during the POI). We further found that this supply "overhang" would effectively limit the demand and dampen the prices for BCTS auction volumes. These findings formed part of the Department's reasoning for rejecting use of the BCTS auction prices as a tier-one benchmark in the Preliminary Determination.

At the time of the Preliminary Determination, record information indicated that the holders of Forest License and Tree Farm License (the two license types that account for the majority of timber allocated and harvested in British Columbia) harvested only 72.7 percent and 75.1 percent, respectively, of their allocations. n338 However, in reviewing the record information, as well as the comments submitted by interested parties, we have reconsidered that finding and agree that the record evidence does not support a determination that a meaningful supply "overhang" exists in British Columbia. Specifically, the record indicates that most of the AAC that remained unharvested were MPB-killed dead pine timber, on which the potential return from processing into lumber or other wood products would not justify the costs of harvesting. n339 Consequently, we do not find that this particular supply of surplus, but inferior, Crown tenure AAC timber, would necessarily have the dampening effect on BCTS auction stumpage prices that we surmised in the Preliminary Determination. n340

n338 See GBC Primary QNR Response, Part 1 at Exhibit BC-S-5; see also Market Memorandum, British Columbia Attachment, Table 4.1.

n339 See, e.g., GBC Verification Exhibits at Exhibit 3, page 27; see also Canfor Primary QNR Response, Part 1 at STUMP-B-18; see also West Fraser Primary QNR Response, Part 1 at WF-BCST-12.

n340 However, as a general matter, we do not concede that, as parties have argued, a supply "overhang" could not be evidence of distortion. The change in our finding here is driven strictly by the nature of the surplus volume, i.e., uneconomical MPB-damaged timber not comparable to the BCTS auction stock.

However, we continue to find that a small number of large lumber companies dominate the BCTS auction market, thereby inhibiting ***competition***. n341 Parties have not provided any evidence that would change our preliminary finding in this regard. We note that the GBC has recognized this large-company dominance to be a problem. Specifically, the GBC introduced the so-called three-sale limit'restricting the number of active TSLs n342 that a company may hold simultaneously to three'ostensibly to encourage ***competition*** by imposing a cap on the extent of participation by any one company and thus preventing the large companies from dominating all the auctions. n343 However, by so doing, the GBC imposes an artificial barrier to participation in the BCTS auctions; while no companies are per se excluded from the auction system as a whole, the three-sale quota means that, to the extent some companies have already reached the quota, any given auction will find fewer bidders that could otherwise participate. In this manner, the BCTS auctions are not the type of"***competitively*** run government auctions" envisioned under 19 CFR 351.511(a)(2)(i). For this reason alone, the auctions could not provide a tier-one benchmark under our ***regulations*** even if we were to find a non-distorted market overall such that the first tier in our methodology would apply.

n341 Specifically, five companies account for 64.8 percent of cruise-based auction volume and 43.6 percent of the scale-based auction volume. See Market Memorandum, British Columbia Attachment, Scale Based Auction Table 1.2 and Cruise Based Auction Table at 1.1.

n342 TSLs represent the authority to harvest granted to winning BCTS auction bidders. See, e.g., GBC Primary QNR Response, Part 1 at BC 1-110.

n343 See GBC Supp QNR 4 Response at 19 ("The rationale for the three-sale limit is to encourage ***competition*** for auctions by preventing the emergence of dominant firms. In designing the auction based system, British Columbia sought to encourage a diverse market logger community as bidders for the sales, to promote robust ***competition*** in the auctions."); see also GBC Verification Report at 11-12.

In any case, record information indicates that dominant firms have managed to get around the three-sale rule by making "straw purchases" through proxy bidders, thus maintaining effective dominance in these auctions. Specifically, record information indicates that the three-sale limit has failed to significantly diversify the entities harvesting from TSLs won on the auction in the manner intended. Instead, larger companies, including the mandatory respondents, continue to effectively manage and harvest more than three TSLs at a time by means of these "straw purchases" or by working with contract harvesters. For example, Tolko has reported stumpage costs associated with "third-party won BCTS auction purchases." n344 Similarly, West Fraser has reported costs for "stumpage on Crown timber harvested from BCTS licenses purchased at BCTS auctions by West Fraser's employees (which West Fraser treats the same way it treats BCTS licenses it purchases directly, since for these licenses West Fraser assumes all of the financial and operational liability associated with the timber sale)." n345 In other words, these large companies are managing to access additional TSL timber through third-party proxies or straw purchasers, such as employees, effectively nullifying the three-sale limit.

n344 See Tolko Supp QNR 2 Response, Part 1 at 25.

n345 See West Fraser Primary QNR Response, Part 1 at 158.

Moreover, while the three-sale rule has, in practice, failed to deliver the intended policy result of broadening participation in the TSL harvest, it has, at the same time, introduced an additional source of market distortion, in the form of cutting rights fees necessitated by "straw purchases" or proxy bidding. When reporting their harvest-related costs, all three mandatory respondents with operations in British Columbia have reported that in obtaining the right to harvest a TSL won by a third party at auction, they pay a cutting rights fee to the third party. n346 In other words, companies who pay these cutting rights fees to harvest a TSL from a third party are incurring an additional cost that they would not otherwise incur if bidding for the TSL directly ' a cost that is likely factored into the auction in the form of lower bids, as the bidder would expect the companies to discount their purchase price accordingly. As we noted in the Preliminary Determination, based on a study from the BCLTC, non-harvesting third-party bidders at auction "base their auction bids on what the tenure-holding companies are willing to pay for auction-origin logs." n347 In such circumstances, the price paid by the BCTS auction winner does not reflect the full value of the timber.

n346 Id:, see also Tolko Supp QNR 2 Response, Part 1 at 25; see also Canfor Supp QNR 4 Response at 18.

n347 See PDM at 36.

In addition to the distortive effects of the three-sale rule, the log export restrictions in place in British Columbia also inhibit log exports from the province. This prevents log sellers from seeking the highest prices in all markets, and thus creates additional downward pressure on the log prices in the province. n348 The demand and value of logs in the BC market is linked with demand and value of stumpage in BC, as the supply and value of the logs available in the market are derived from the stumpage market in the province. Thus, distortion in the log market also impacts the stumpage market. For these reasons, we continue to find that the prices of Crown-origin standing timber auctioned under BCTS are not market-determined prices resulting from ***competitively***-run government auctions within the meaning ofl9 CFR 351.511(a)(2)(i), and therefore are not suitable for use as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).

n348 See Comments 44, 45, 46 and 47 for a further discussion of the BC Log Export Restraints.

Comment 19: Whether the Department Should Use Conversion Factors from the BC Dual Scale Study

In the Preliminary Determination, the Department used a single log volume conversion factor of 5.93 m3/MBF from a 2002 USFS study to convert U.S benchmark prices in U.S. dollars per MBF and BC stumpage prices in C$ per cubic meter (m3) to the same terms. n349 Various parties challenge the use of this conversion factor for the following reasons: (1) the 2002 conversion factor is based on outdated U.S. PNW log data from the 1984 U.S study, with a mix of species that does not match BC interior species, (2) it does not include the most prevalent species in the BC interior, where the BC-based respondents are located, (3) the 1984 scaling methodology is distinctly different from what is used today in BC to measure the volume in m3, (4) the 1984 study only updated data for logs from green trees of a single diameter and did not include any utility grade trees, and (5) the 1984 study does not capture conversion factors for green and beetle-killed logs for the two species (lodgepole pine and spruce) most affected by the MPB infestation. Those parties advocate using the BC Dual Scale Study. n350

n349 See PDM at 53.

n350 See GBC Case Brief at 57-71 and 77-78; see also Canfor Case Brief at 28-29 and 39-42; see also Tolko Case Brief at 11-14; see also GOC Case Brief at 78-79.

The petitioner argues that the Department should continue to use the 2002 conversion factor that it has used in past lumber investigations. In highlighting its concerns with the BC Dual Scale Study, the petitioner asserts that the logs measured for the study were not representative of the logs in BC sawmills, that companies could have influenced the results by selecting the loads that were scaled, and that there was no guarantee that the logs scaled were in fact processed by sawmills. The petitioner also raised an issue with the calculations for logs graded as "utility" under the Scribner methodology in the U.S. PNW, arguing that such logs were scaled as having no volume, but were included in the study data, which distorted the resulting conversion factors. n351

n351 See Petitioner Rebuttal Case Brief at 36-40.

Department's Position: In instances where parties have presented a self-commissioned study conducted specifically in anticipation of an investigation for the Department's consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any study bias. That is, the Department must evaluate whether any study or report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. Therefore, the essential issue here is whether the BC Dual Scale Study produced conversion factors that were based upon a valid sampling methodology.

The BC Dual Scale Study conducted by Mr. Jendro and Mr. Hart was commissioned by the BC MFLNRO. n352 While we do not question the qualifications of Mr. Jendro and Mr. Hart, or the scaling professionals used by Jendro & Hart LLC, we have serious concerns about the methodology used to identify the selected scaling sites. Given the volume of lumber products being produced by the BC respondents, it is unclear why only 13 scaling sites were selected by Mr. Jendro and Mr. Hart for purposes of the BC Dual Scale Study. Further, although these sites were purportedly selected based upon the historic knowledge of the trees that are harvested and scaled at these 13 sites, n353 there is no evidence that either the GBC or Mr. Jendro and Mr. Hart selected these sites using any statistically valid sampling methodology. While the data in the BC Dual Scale Study may be "valid" in the sense that they are based upon the actual measurement of trees in BC, our concern arises when this data is subsequently characterized to be representative of all interior BC trees. We find that this concern may be alleviated if the BC Dual Scale Study was conducted using a statistically valid sampling methodology, which could then better represent the large area of BC interior trees or possibly all trees in BC. The BC Dual Scale Study does not explain how and whether different types of sampling were considered, or even selected: random, stratified, or composite, etc. The structure of a sampling methodology is a key decision point of any sound sampling methodology because how a sample is conducted can minimize bias, maximize the representativeness of the sample result, and inform the statistical relevance to the population. Instead, the researchers of the BC Dual Scale Study note that in order to have study results relatable to the BC Interior harvest, "the study team distributed study samples among the forest types represented by the BC interior harvest." n354 Therefore, because there is no evidence that the study used statistically valid sampling methodologies in selecting these 13 sites, the Department cannot determine that the information in the study provides a representative sample.

n352 See GBC Primary QNR Response, Part II at Exhibit BCS-183, Appendix A, at 3.

n353 Id. at 9.

n354 Id. at 8.

The absence of such evidence is particularly concerning, because the GBC acknowledges that the BC Dual Scale Study was commissioned by the BC MFLNRO in anticipation of this investigation. The Federal Circuit, in evaluating whether a party's claim had been sufficiently corroborated with evidence in a patent case, opined that "contemporaneous documentary evidence provides greater corroborative value" in determining whether a party's litigation "story is credible." n355 This is because evidence preceding the litigation eliminates "the risk of litigation-inspired fabrication or exaggeration" that may come from later-developed evidence, intended to corroborate the party's story. n356 We find that the Federal Circuit's concerns are equally applicable to evidence created for the purpose of an adjudicatory administrative proceeding, such as this one. n357 Although we consider all evidence on the record of a proceeding, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in the ongoing administrative proceeding. Because the BC Dual Scale study was prepared for the express purpose of submission in this investigation, we find that it is at "risk of litigation-inspired fabrication or exaggeration," which diminishes its weight.

n355 See Transweb.

n356 See Sandt Tech.

n357 The Department has previously expressed concern that commissioned reports prepared for purposes of a proceeding may be unreliable. See CFS from Indonesia IDM at Comment 12.

By contrast, the USFS study upon which we relied in the Preliminary Determination was produced by a U.S. governmental entity that is not a party to this investigation. Therefore, we presume it to be unbiased, and respondents have presented no argument or evidence to undermine that conclusion here. Further, we have found this source to be reliable in a prior lumber proceeding, as well as in the recently-completed SC Paper from Canada - Expedited Review. n358

n358 See Final Results of 2nd AR IDM at 14; see also SC Paper from Canada - Expedited Review - Preliminary Results (unchanged in the final results).

In addition to the above concerns, we note that the BC Dual Scale Study is only based on trees in BC, not in Washington state, while the USFS study is based on trees in Washington state. The benchmark used for this analysis is the price of a log in the state of Washington. The GBC has stated on the record that "the relationship of volumes using BC Metric and Scribner scaling rules is complex and varies substantially depending on log diameter, shape and defect." n359 On this record, we have a Washington state-priced benchmark that is in board feet and we need to convert that price to cubic meters. The Washington state price in cubic meters would be based upon the cubic meters of the tree in Washington state, not BC. Therefore, we do not agree with the proposal that it would be more accurate to convert the Washington state benchmark prices using a conversion factor derived from trees in BC, especially given that we have a conversion factor on the record that is based on trees in Washington state.

n359 See GBC Primary QNR Response, Part II at Exhibit BCS-183, Appendix A, at 110.

Therefore, given our concerns with the lack of a valid sampling methodology used to produce the data in the BC Dual Scale Study and the applicability of a conversion factor based on BC trees used on a price for Washington trees, we have not relied on the information in the BC Dual Scale Study and continue to use the conversion factor of 5.93 m3/MBF for the final determination. And because we have no basis for concluding that the BC Dual Scale Study generated unbiased conversion factors, we have not addressed the parties' specific arguments regarding the relative merits of the BC Dual Scale Study as compared with the USFS study.

Comment 20: Whether the Department Should Rely on Log Prices from Forest 2 Market Instead of WDNR Prices as a Benchmark to Compare Respondents' BC Stumpage Purchases

In the Preliminary Determination, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, by comparing respondents' purchases to a U.S. benchmark comprised of log prices in the PNW published by the WDNR. n360

n360 See PDM at 52-55.

The petitioner argues the Department should rely on log prices from Forest2Market, a private company that collects and publishes log pricing data based on actual transactions in the same region, instead of WDNR log prices which are simple average of quoted prices. n361 The GBC and BCLTC counter that, to the extent the Department continues to rely on a cross-border benchmark, it should refrain from relying on the Forest2Market data because they are unsubstantiated, non-transparent summary data, and there is no evidence that the data are representative of U.S. PNW log price transactions during the POI, or that they include log prices for salvage or beetle-killed wood. Furthermore, the data do not include cull or utility logs. n362

n361 See Petitioner Case Brief at 18-22.

n362 See GBC Rebuttal Brief at 4-9.

Department's Position: In the Preliminary Determination, the Department found that the source data underlying the prices reported by Forest2Market are not currently on the record. n363 The petitioner argues that these prices are nonetheless preferable because they reflect a large number of actual transactions, compiled from actual invoices provided by log sellers and buyers. The petitioner contends that the WDNR data, by contrast, reflect price quotes, and not actual transactions, contrary to the Department's general preference to use actual transaction prices as benchmarks, rather than offer prices or estimated prices, if actual transaction prices are available. n364

n363 See PDM at 50.

n364 See Petitioner Case Brief at 18-22.

We disagree that the log prices reported by Forest2Market, as presented in a study prepared by Mason, Bruce & Girard for purposes of this investigation, are preferable to the WDNR data relied upon in the Preliminary Determination. The study conducted by Mason, Bruce & Girard, Inc. was based on information from several "customized" reports prepared by Forest2Market that summarized U.S. logs sold during the calendar year 20 1 5. n365 The Mason, Bruce, & Girard, Inc. study then took the summary U.S. log price information from Forest2Market and performed further calculations to derive U.S. log prices for BC coastal and inland species and grades. n366 The Department continues to find that, since the data and search parameters underlying the prices reported by Forest2Market (for a study conducted specifically for this investigation) are not on the record of this investigation and are otherwise unverifiable, we cannot find those reported U.S. log prices to be complete, representative, or reliable. In contrast, the U.S. PNW log prices published by WDNR are collected on a monthly-basis, in the ordinary course of business by a government agency, and are in that sense reliable. Moreover, the prices reflected in the data are market-based and representative of species purchased by the BC respondents during the POI.

n365 See Petitioner NFI Submission 1 at Exhibit 1.

n366 Id. at Figures 9 and 10 of Exhibit 1.

The petitioner does not appear to dispute that the Mason, Bruce & Girard study is based on unverifiable data, but apparently believes that this flaw is outweighed by the fact that the WDNR data include price quotes. We disagree. While the Department may generally prefer actual transaction prices, where available, we do not consider the Forest2Market log prices to be a reliable alternative for reasons set forth above.

Comment 21: Whether U.S. PNW Log Prices Should Not Be Used as a Benchmark Because They Do Not Reflect Prevailing Market Conditions in British Columbia

In the Preliminary Determination, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, and measured adequacy of remuneration by comparing the respondents' purchase prices to a U.S. benchmark comprised of log prices in the PNW published by the WDNR. n367 The GBC, Canfor, Tolko, and the GOC argue that the Department's finding that PNW log prices provide an appropriate starting point for deriving the market value of standing timber in British Columbia is contradicted by record evidence and does not account for local variability in the physical characteristics of logs, prevalence of mountain pine beetle infestation, local market conditions, and contractual terms of sale. n368 Unless the Department is able to explain and control for all of the many factors that cause the variation in log prices between the PNW and British Columbia, then the U.S. PNW log prices are not a proper basis for a tier-three benchmark. The petitioner counters that the respondents do not challenge the fundamental premise of the Department's methodology: that the value of logs is primarily driven by the value of the products that can be made from those logs. The petitioner also argues that respondents have not proposed a better alternative measure of the value of BC stumpage, other than the flawed BCTS auction values. n369

n367 See PDM at 52-55.

n368 See GBC Case Brief at 30-41; see also Canfor Case Brief at 35; see also Tolko Case Brief atll; see also GOC Etal Common Issues Case Brief at 71-72.

n369 See Petitioner Rebuttal Case Brief at 31-36.

Department's Position: As fully discussed in Comment 18, we continue to find that BCTS auctions cannot serve as a market-determined tier-one benchmark price. We also continue to find that private stumpage prices in Nova Scotia and log prices in British Columbia are not appropriate benchmarks for British Columbia. n370 We also continue to find that U.S. stumpage prices are not an appropriate tier-two benchmark. n371 Therefore, following our established hierarchy under 19 CFR 351.511(a)(2)(iii), and consistent with Lumber IV., we again find it appropriate to use U.S. log prices as tier-three benchmarks when determining the adequacy of remuneration of the GBC's administered stumpage program (i.e., a benchmark that is consistent with market principles under 19 CFR351.511(a)(2)(iii)). n372

n370 See PDM at 46-48.

n371 Id. at 48.

n372 Id. at 49-50, and Final Results of 2nd AR IDM at 12-13.

In Lumber IV, we found that using U.S. log prices to derive a benchmark for stumpage is consistent with a market principles analysis, because: (1) standing values are largely derived from the demand for logs produced from a given tree; (2) the timber species in the U.S. PNW and British Columbia are very similar and, therefore, comparable if properly adjusted for market conditions in British Columbia; and (3) U.S. log prices are market-determined. n373 We continue to find, with no contradiction in the record evidence, that the timber species harvested by the respondent firms in British Columbia continue to match the species in the U.S. PNW. n374 Furthermore, the forestry conditions in the area that encompasses the U.S. PNW and British Columbia have not changed since Lumber IV such that log prices in the U.S. PNW and British Columbia are no longer comparable. n375 As we explained in the Preliminary Determination, timber species and growing conditions are both key factors in determining the market value of standing timber, and thus whether timber from the U.S. PNW and British Columbia are comparable. n376

n373 See PDM at 49; see also Final Results of 1st AR IDM at 16; see also Final Results of 2nd AR IDM at 12-13.

n374 See PDM at 49.

n375 Id.

n376 Id.

As discussed above, the legal requirements governing the Department's selection of benchmarks do not require perfection. n377 A benchmark, by nature, is not an exact match to the subsidy being evaluated. However, pursuant to section 771(5)(D)(iv) of the Act, the Department shall determine the adequacy of remuneration in relation to prevailing market conditions, i.e., price, quality, availability, marketability, transportation, and other conditions of purchase or sale. To calculate "derived market stumpage prices" to compare with Crown stumpage, we deducted certain costs reported by BC-based respondents from the U.S. PNW log price benchmarks. The costs we adjusted for were, inter alia, costs associated with the tenure contract and accessing timber for harvesting, and cost of acquiring timber. Because these cost adjustments were made with respect to market conditions in British Columbia, the derived market stumpage prices were representative of the prevailing market conditions in the province. See Comment 24 for further discussion of adjustment made to the U.S. PNW log price benchmarks.

n377 See HRS from India 2007AR IDM at 52.

We continue to disagree with the GBC, Canfor, and Tolko that the differences in the prevailing market conditions between the U.S. PNW and British Columbia are so significant as to make a cross-border comparison impossible, even with adjustments. As an initial matter, the parties rely almost exclusively upon the Jendro & Hart report for their arguments with respect to this issue. The Jendro & Hart report was specifically commissioned for purposes of this investigation, and we note elsewhere in this memorandum, such reports carry only limited weight given the potential for bias and conclusions that were tailored to generate a desired result. n378

n378 See, e.g., discussion under Comment 16, with regard to the Brattle Report, and under Comment 19, with regard to the BC Dual Scale Study.

Moreover, the GBC, Canfor, and Tolko have not submitted any record evidence to demonstrate, nor do they argue that, the timber species grown in the U.S. PNW and in British Columbia are not comparable. Instead, their arguments focus on differences in the relative distribution of certain species in the U.S. PNW as compared with British Columbia. They also rely upon unsupported statements in the Jendro & Hart report to argue that growing conditions, i.e., soil, topography, and climate, vary between the U.S. PNW and British Columbia. n379 To the extent that these purported differences find support in the record, we disagree that we are required to achieve a precise match in our benchmark analysis. n380 We also disagree that such differences render a comparison impossible. To the contrary, in Lumber IV, we found, with no contradiction in the record evidence that the forests of the U.S. PNW and British Columbia are contiguous, extend across the geopolitical border, and that the same species and growing conditions prevail in the U.S. PNW and British Columbia. Further, in deriving market-determined stumpage prices from U.S. log prices, we have selected prices for comparable species and made adjustments as warranted, e.g., for transportation, to the U.S. PNW log price benchmarks to account for the commercial environment of the B.C. timber market.

n379 See Jendro & Hart report at 21 and 24.

n380 See HRS from India 2007 AR IDM at 52.

The GBC, Canfor, and Tolko also argue that differences in conditions affecting the log quality, such as the prevalence of the mountain pine beetle infestation, complicate a cross-border comparison. However, the GBC, Canfor, and Tolko have not provided evidence that blue-stained timber prices are not already included in the U.S. PNW log price benchmarks, nor have parties provided other reliable blue-stained timber prices. Similarly, the record does not contain a reliable means by which the Department could account for any differences in grading systems between the U.S. PNW and British Columbia. Therefore, we find that we have duly adjusted for B.C. market conditions to the extent the record reasonably allows. See Comment 25 for further details.

Finally, we are not persuaded by the GBC's arguments that cross-border comparisons are complicated by, for example, differences in ***regulations***, tax, contractual conditions, terms of sale, supply variability and other conditions. As an initial matter, if these arguments were true, all potential transactions that are not strictly "in-country", or "in-province" for that matter, would be impermissible as benchmarks. This result is contrary to U.S. law and the Department's ***regulations***, which provide for the use of benchmarks that are from outside the jurisdiction that is granting the subsidy. n381 Furthermore, it would be both impracticable and superfluous to require adjustments be made to reflect the impact certain differences in market conditions that do not have any manifest or demonstrated effect on the comparability of goods. Nothing in the countervailing duty statute or ***regulations*** requires such refinement in the construction of subsidy benchmarks. Moreover, the mere fact that there may be differences in a myriad of ***regulations***, taxes, contractual conditions, terms of sale, supply variability and other conditions in the respective jurisdictions says nothing about the relative impact of those conditions on prices for goods sold. Because many of these conditions largely exist on both sides of the U.S.-Canadian border, and the GBC has not demonstrated how these differences render insupportable any timber comparison, we do not agree that adjustments for these factors are either necessary or required.

n381 See 19 CFR 351.511(a)(2).

For all of the reasons described above, we continue to find that U.S. PNW log prices are the most appropriate benchmarks on the record to assess the adequacy of remuneration for Crown stumpage in BC.

Comment 22: Whether the Department Should Use a Timbermark-Specific Annual Average Stumpage Price

In the Preliminary Determination, the Department calculated a countervailable subsidy for the GBC's provision of stumpage for LTAR. n382 Canfor argues that the Department introduced distortions into its calculation when it calculated average stumpage prices by timbermark and species. n383 Canfor argues that the Department should use an annual roll-up by species, to determine an annual average species-specific stumpage price paid; the Department should not calculate timbermark- and species-specific average stumpage prices as in the Preliminary Determination, n384 No other parties provided arguments on this issue. Specifically, Canfor states that the GBC performs various retroactive adjustments to the stumpage price, n385 and that these adjustments are reflected in the GBC's HBS and in Canfor's invoices and include monthly, annual, and other periodic adjustments such as monthly scale-based adjustments, annual reconciliations for all timbermarks, and stumpage rate reappraisals. n386 Although Canfor agrees with the annual roll-up by timbermark and species that the Department employed in the Preliminary Determination, n387 Canfor argues that the Department should not have disaggregated this roll-up by timbermark. According to Canfor, doing so introduced distortions because there are still many species/timbermark combinations with negative or zero quantities or values, which Canfor believes is attributable to the fact that many timbermarks only had deliveries during months of the POI, only had adjustments taking place during the POI, or had limited deliveries with large adjustments that led to negative quantities or values during the POI. n388 According to Canfor, using an annual roll-up that is not disaggregated by timbermark would mitigate these distortions.

n382 See PDM at 54-55.

n383 See Canfor Case Brief at 31.

n384 Id. at 33.

n385 Id. at 30-31.

n386 See Canfor Primary QNR Response, Part 1 at 81-84.

n387 See PDM at 54.

n388 See Canfor Case Brief at 31-32.

Department's Position: We disagree with Canfor that the Department should calculate an annual average stumpage price based on the aggregation of all timbermarks and species. In utilizing a timbermark-based approach and further disaggregating by species, the Department is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible; a transaction-specific analysis is the Department's long-standing preference. n389 For this final determination, we are continuing to use U.S. PNW log prices as the reference price for the derived stumpage benchmark; these pricing data are reported on a species-specific basis. Thus, it is appropriate to examine stumpage prices paid on a species-specific basis to make the comparison with the benchmark as accurate as possible for determining whether and to what extent BC stumpage is provided at LTAR. n390

n389 See SC Paper from Canada - Expedited Review IDM at Comment 25; see also OCTG from PRC Review IDM at Comment 7; see also Sinks from the PRC IDM at Comment 21.

n390 With respect to Cantor's arguments regarding the GBC's use of "stand-as-a-whole" pricing, see Comment 23.

Canfor noted that the billing adjustments and the Department's failure to account for them in the manner Canfor proposes lead to distortions in the Department's benefit calculation. However, Canfor failed to recognize that in its calculations in the Preliminary Determination, the Department already accounted for any potential distortions by removing line items "where both the species-specific volume and value were blank or zero." n391 Further, Canfor has not demonstrated how the aggregate methodology that it advocates will address these purported distortions. n392 For example, Canfor states, without any support, that "these reappraisals and adjustments affect significant quantities of stumpage and a significant number of timbermarks" and that "the problem with analyzing the stumpage benefit on a timbermark-specific basis is that it fails to fully account for these adjustments and appraisals that are taking place during the POI." n393 Consequently, we determine that the use of annual average stumpage prices by timbermark and species remains a reliable methodology to examine the GBC's provision of stumpage for LTAR.

n391 See Canfor Preliminary Calculation Memorandum at 6.

n392 See Canfor Case Brief at 31-33.

n393 Id. at 32-33.

Comment 23: Whether the Department Should Consider BC Stumpage Prices on a "Stand as a Whole" Basis

In the Preliminary Determination, for stumpage purchases in British Columbia, the Department used species-specific benchmarks and compared them to respondents' purchases of Crown-origin standing timber aggregated by timbermark and species. The GBC and West Fraser argue that this methodology failed to account for a prevailing market condition in British Columbia. In particular, the GBC and West Fraser argue that timber stands in British Columbia are priced on a "stand as a whole" basis. As such, all species on a stand are charged the same stumpage rate. The GBC and West Fraser cite to invoices provided by respondents with operations in British Columbia as record evidence establishing this practice of pricing on a stand as a whole basis. n394

n394 See GBC Case Brief at 37; see also West Fraser Case Brief at V-74.

The GBC and West Fraser assert that stand as a whole pricing is a condition of sale, and thus a prevailing market condition, pursuant to section 771(5)(E) of the Act, and the Department must take this into account when measuring adequate remuneration.

To properly account for prevailing market conditions, the GBC and West Fraser propose that the Department either: (1) compare a single weighted-average "all species" benchmark against a single weighted-average "all species" stumpage rate or (2) compare individual species-specific benchmarks against individual species-specific stumpage rates, but cumulate positive and negative benefit amounts. The GBC cites to the NAFTA Panel Redetermination as support that failure to account for "negative" benefits was found inconsistent with the Act and the Department, upon remand, constructed a single weighted-average benchmark for the entire Crown harvest that reflected the relative species mix or market conditions in British Columbia, which is similar to the facts of this investigation. n395

n395 See GBC Case Brief at V-76.

The petitioner rebuts that neither the GBC nor the petitioner has provided a basis for the Department to depart from its well-established practice of declining to account for purported "negative benefits." n396

n396 See Petitioner Rebuttal Brief at 79-80.

Department's Position: The Department continues to apply its preliminary methodology in relation to aggregating the standing timber by timbermark and species in British Columbia for purposes of making a comparison with the Washington state benchmark.

Because section 771(5)(E)(iv) of the Act does not provide guidance on how the Department is to measure the adequacy of remuneration in the case of government-provided goods, the Department has developed a tiered framework under 19 CFR 351.511(a)(2) for analyzing this question. The Department continues to find that that the record does not permit us to measure the adequacy of remuneration for the provision of BC stumpage under a tier-one or tier-two analysis. Thus, the Department is using a tier-three analysis in this final determination. Pursuant tol9 CFR 351.511(a)(2)(iii), the Department will measure the adequacy of remuneration by assessing whether the government price is consistent with market principles.

As discussed in Comment 24, to determine whether stumpage prices in British Columbia are consistent with "market principles," the Department has constructed a tier-three derived benchmark stumpage price based on log prices adjusted for the respondents' costs. n397 Under this methodology, we find that standing timber values are largely derived from the demand for logs produced from a given tree and "(t]he species of a tree largely determines the downstream products that can be produced from a tree; the value of a standing tree is derived from the demand for logs produced from that tree and the demand for logs is in turn derived from the demand for the type of lumber produced from these logs." n398 Therefore, the Department has in essence constructed a market-based stumpage price in BC using market-determined U.S. log prices, recognizing that the species of a tree is an integral part of the value of that tree.

n397 See Lumber IV AR1IDM at 17 ("We identified numerous factors affecting market conditions that needed to be adjusted for, inter alia, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and private timber in B.C. were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a "derived market stumpage price' to compare with Crown stumpage."); see also Lumber IV AR2 IDM at 16 ("[W]e subtracted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit."); see also CFS from Indonesia, CPP from Indonesia, and CUP from Indonesia.

n398 See Final Results of 1st AR IDM at 16; see also Final Results of 2nd AR IDM at 12-13.

Although the GBC and West Fraser argue the Department must consider pricing on a "stand as a whole" basis as a prevailing market condition, we disagree. Under our tier-three benchmark methodology we find that a main condition for determining stumpage is the demand of the logs from that tree. As such, the Department would not accurately assess the adequacy of remuneration for stumpage from a weighted-average combined species benchmark, considering how its value is evaluated according to market principles. Moreover, not calculating a weighted-average combined species benchmark is consistent with our practice. In utilizing a timbermark-based approach and further disaggregating by species, the Department is conducting the calculation on the basis that is as close to a transaction-specific analysis as possible; a transaction-specific analysis is the Department's long-standing preference. n399 And by not offsetting its comparisons for negative benefits, the Department is acting consistently with the fact that a benefit is either conferred or not conferred, and a positive benefit from certain transactions cannot be masked or otherwise offset by "negative benefits" from other transactions. n400 Because a benefit is either conferred or not conferred, the manner in which the GBC prices its stumpage is irrelevant to our analysis. If a government chooses to set a price for a whole stand, rather than differentiating by species within a particular stand, that does not change the amount of the benefit conferred for purposes of our analysis.

n399 See SC Paper from Canada - Expedited Review IDM at Comment 25; see also OCTG from the PRC Review IDM at Comment 7; see also Sinks from the PRC IDM at Comment 21.

n400 For further discussion of this issue, see Comment 22.

With respect to the GBC and West Fraser's reliance on the NAFTA June 7, 2004 Panel decision in Lumber IV to support their contention that the Department must account for "stand as a whole" pricing as a prevailing market condition in British Columbia, that decision is not binding on the Department in this investigation. n401

n401 See Algoma Steel Corp. (finding that individual judges on the Court of International Trade are not bound by the decisions of another); see also NAFTA Art. 1904.3 (providing that panels apply "the general legal principles that a court of the importing party otherwise would apply to a review of a determination of the ***competent*** investigating authority").

Comment 24: Whether the Department Should Grant Cost Adjustments in British Columbia

The GBC, Tolko, and Canfor argue that while the Department properly adjusted the tier-three benchmark for access, harvesting and hauling costs in the Preliminary Determination, the Department's reliance on SC Paper from Canada - Expedited Review as a basis for not adjusting for other costs, including silviculture and license management costs, is misguided. n402 The GBC and Tolko argue that the analysis in SC Paper from Canada - Expedited Review concerned the evaluation of grant programs and involved the comparison of a tier-one stumpage benchmark to stumpage purchases, while, conversely, in this investigation, the LTAR analysis of BC stumpage uses a tier-three benchmark constructed based on the market principle of derived demand. n403 The GBC also contends that the Department did not provide any evidentiary basis for its assertion that some costs are related to long-term tenure rights, and Canfor argues that these costs are not related to long-term tenure rights, but, rather, are obligations. n404 The petitioner rebuts that the respondents are making the same arguments about long-term tenure rights that the Department found to be unpersuasive in SC Paper from Canada - Expedited Review n405 According to the petitioner, in the Preliminary Determination, the Department properly made an adjustment to the stumpage price for costs that were directly necessary to access the standing timber for harvest and hauling to the sawmill to allow for an apples-to-apples comparison with cross-border harvested log prices. n406

n402 See GBC Case Brief at 53-56; see also Tolko Case Brief at 21; see also Canfor Case Brief at 14-15;

n403 See GBC Case Brief at 53-56; see also Tolko Case Brief at 21.

n404 See GBC Case Brief at 55-56; see also Canfor Case Brief at 12-14.

n405 See Petitioner Rebuttal Brief at 62.

n406 Id. at 69-70.

The GBC and West Fraser also argue that the Department's analysis in the Preliminary Determination was inconsistent with the log price methodology applied in Lumber IV.The GBC and West Fraser argue that under the Department's market-based derived demand methodology, the Department must take into account all relevant costs that BC tenure holders incur to access and harvest Crown timber when deriving the market-determined price that tenure holders would be willing to pay for the right to harvest standing timber on Crown lands in British Columbia. n407 The GBC, Canfor, and Tolko contend that in its Preliminary Determination, the Department did not adjust for some costs the tenure holders must incur as a condition of accessing Crown timber, including silviculture and forest management costs that are legally required. n408 The GBC, Canfor and Tolko argue that the Department properly accounted for these costs, including silviculture and forest management costs, when it applied its derived demand methodology in Lumber IV. n409

n407 See GBC Case Brief at 46-47; see also West Fraser Case Brief at 47.

n408 See GBC Case Brief at 43-52; see also Canfor Case Brief at 21-25; see also Tolko Case Brief at 20-27.

n409 See GBC Case Brief at 49-52; see also Canfor Case Brief at 7-17, see also Tolko Case Brief at 22.

The GBC, Canfor and West Fraser further contend that, in the Preliminary Determination, the Department did not adequately explain its departure from its practice in Lumber IV. n410 The GBC, Canfor and Tolko argue that the Department's explanation regarding the aggregate calculation in Lumber IV versus this company-specific investigation is irrelevant because the types of costs that were treated as adjustments in Lumber IV were not contingent upon or related to the aggregate basis of that investigation. n411 Canfor asserts that the Department's second reason for denying adjustments for certain costs in the Preliminary Determination, on the basis that those costs are associated with companies' long-term tenure rights, is equally misplaced because these costs represent tenure obligations and not rights. Canfor asserts that the only right paid for by tenure holders is the right to establish, grow, harvest and remove timber from Crown land. n412 The petitioner rebuts the respondents' arguments by stating that the Department properly explained its rationale for moving away from Lumber IV and that 19 CFR 351.511(a)(2)(iii) requires that a tier-three benchmark analysis be done on a case-by-case basis. n413

n410 See GBC Case Brief at 53-54; see also Canfor Case Brief at 10; see also West Fraser Case Brief at 45-46.

n411 Id.; see also Tolko Case Brief at 18-19; see also West Fraser Case Brief at 46.

n412 See Canfor Case Brief at 11-12.

n413 See Petitioner Rebuttal at 60-61 and 68.

Further, the GBC and West Fraser assert that the operation of the MPS equation demonstrates that the costs of fulfilling tenure obligations are effectively part of the price that Crown tenure holders pay to the GBC for stumpage. n414 The Crown stumpage rates are based on Crown auction prices that include obligated costs, including silviculture and forest management costs, because these activities are performed by the Crown, but for non-auction purchases, the Crown stumpage rate is adjusted to remove these costs because these activities are performed by the tenure holder. The GBC and West Fraser contend that it is internally inconsistent for the Department to take certain costs into account (such as road-building costs) while not taking into account other costs that the tenure holder must incur in order to access and harvest standing timber. n415 Further, while Canfor and Tolko assert that the Department properly adjusted for certain harvesting costs in the Preliminary Determination, they argue that the Department should have accounted for other harvesting costs in its Preliminary Determination, including waste stumpage payments, cutting rights fees, and scaling costs, because these costs are part of accessing, harvesting and hauling timber in British Columbia. n416

n414 See GBC Case Brief at 51-53; see also West Fraser Case Brief at 48.

n415 Id.

n416 See Canfor Case Brief at 21-23; see also Tolko Case Brief at 24.

The respondents contend that accounting for all relevant costs is necessary to ensure that the derived demand methodology relates to prevailing market conditions in British Columbia, as required by the statute. n417 The respondents assert that the objective of the methodology is to derive a market-determined benchmark for stumpage in British Columbia against which to evaluate the adequacy of remuneration, and the methodology must take into account prevailing market conditions in British Columbia, a fact that the Department recognized in its analysis of the program in Lumber IV. n418

n417 See GBC Case Brief at 47; see also Tolko Case Brief at 22; see also Canfor Case Brief at 9.

n418 Id.

The petitioner rebuts that while the respondents argue that the Department must adjust the stumpage price for all reported costs during the POI, this would not result in a market-derived stumpage price, but a price based on the wholesale acceptance of their fixed and variable operational costs, regardless of whether such costs are directly related to stumpage prices during the POI or already reflected in the benchmark price. n419 The petitioner argues that silviculture costs reported by the respondents are for future expenses not associated with the harvesting of timber during the POI and are estimates of future liability and cannot be reasonably included as directly related to market-based stumpage prices during the POI. n420 Additionally, the petitioner asserts that the Department should not adjust for indirect forest management and planning fees because these costs are not directly related to the harvest of timber, but are incurred with general business administration and regulatory affairs. n421

n419 See Petitioner Rebuttal Brief at 68-72.

n420 Id. at 72-73.

n421 Id. at 75-76.

West Fraser, Canfor, and Tolko assert that the Department must also take into account their tenure/stumpage acquisition costs by adjusting for the depletion and amortization of their tenure purchases and cutting rights fees paid for purchases of stumpage on the tenures of third-parties. n422 The respondents argue that because they did not obtain most of their tenures from the GBC, but rather by purchasing tenures or cutting rights from third parties, the cost of obtaining these rights must be included in the Department's analysis. Tolko and West Fraser argue that the CIT found in RZBC Group that when a contribution originates with the Government but passes through an intermediary before going to the ultimate user, "the middleman may skim some of the benefit by reselling the subsidized inputs at a markup.. .if that marked-up cost that the final user pays is less than the market cost, the user still gets a benefit." n423 The respondents contend that the Department must examine whether the stumpage price inclusive of the cutting rights fees (,i.e., the markup) paid by the respondents is less than the benchmark.

n422 See West Fraser Case Brief at 47; see also Canfor Case Brief at 25; see also Tolko Case Brief at 27-28.

n423 See West Fraser Case Brief at 47; see also Tolko Case Brief at 29 (citing to RZBC Group).

The petitioner, in its affirmative case brief, contends that the Department should reverse its Preliminary Determination allowing adjustments for G&A costs as part of the access, harvest and hauling costs reported by the respondents. The petitioner contends that these G&A costs include wages/salaries and benefits, administration, overhead and amortization, that relate to the general functioning of the company and are not directly related to the harvest and hauling of timber. n424 The petitioner also argues that the Department should permit an adjustment for costs only if the respondent can demonstrate that an expense was directly related to the market-based stumpage price during the POI and whether the adjustment is reflected in one comparison point but not the other. n425 The GBC rebuts that the G&A costs reported by the respondents relate directly to the harvest and hauling of timber and were verified by the Department as being directly related. n426

n424 See Petitioner Case Brief at 27-28; see also Petitioner Rebuttal Brief at 73-74.

n425 See Petitioner Rebuttal Brief at 69.

n426 See GBC Rebuttal at 14-19.

Department's Position: As discussed in Comments 18, 20, and 21, the Department will continue to use delivered log prices from Washington state as the starting point for a tier-three benchmark in our calculation of the benefit conferred by the GBC's provision of stumpage for LTAR for the final determination. In the Preliminary Determination, the Department did not adjust for certain costs because the costs were preliminarily determined to be tied to the province's provision of long-term access to supply to tenure holders and licensees. n427 However, for the final determination, the Department has determined that it is appropriate in British Columbia to adjust the benchmark delivered log price not just for the respondents' access, harvest and hauling costs, but also for certain additional costs associated with the respondents' Crown tenure obligations, to arrive at a derived stumpage price.

n427 See PDM at 51.

We disagree with the petitioner that the Department's analysis in SC Paper from Canada -Expedited Review is controlling here. With respect to silviculture and forest management costs, we find upon further evaluation of this issue that the record does not support the Department's Preliminary Determination that these costs in British Columbia are tied to the province's provision of long-term access to supply to tenure holders and licensees. n428 In this investigation, the record demonstrates that tenure holders in British Columbia must pay an annual rent charge to the province for harvesting rights on Crown land because these rights "are encumbering another title (the GBC's) that sits below. The concept of annual rent captures the value of this encumbrance." n429 As noted in the SC Paper from Canada - Expedited Review, an annual rent charge to the respondent for access to Crown land did not exist in New Brunswick. n430 Additionally, the record demonstrates that unlike the stumpage regime in New Brunswick, in British Columbia, both silviculture and forest management expenses are directly tied to the Crown stumpage price as they are components of the stumpage price generated by the MPS. n431 Furthermore, unlike the analysis in SC Paper from Canada - Expedited Review, which involved the comparison of a tier-one stumpage price benchmark to a Crown stumpage price, the LTAR calculation in British Columbia in this investigation is a tier-three comparison for which we are constructing a stumpage rate using delivered log prices in Washington state as a reference price and making appropriate adjustments to develop a benchmark to determine whether the government price is consistent with market principles. As we explain below, the analytical inquiries are different under a tier-one and tier-three benchmark analysis. Therefore, we agree with the respondents that the cost adjustment framework from SC Paper from Canada -Expedited Review that we relied upon in the Preliminary Determination is not applicable to British Columbia for this investigation.

n428 Id. at 51.

n429 See GBC Verification Report at 13.

n430 See SC Paper from Canada - Expedited Review IDM at 115.

n431 See GBC Primary QNR Response, Part 1 at 145-146.

As the Department stated in the Preliminary Determination, we found that delivered log prices from Washington state are an appropriate benchmark under 19 CFR 351.511(a)(2)(iii) because they are market-determined prices n432 and, as discussed elsewhere in this memo, n433 we continue to find they are an appropriate benchmark. The Department's ***regulations*** do not specify how the Department is to conduct its analysis of whether a price is consistent with market principles and, as the Department explained in CFS from Indonesia, "by its nature, the analysis depends upon available information concerning the market sector at issue and, therefore, must be developed on a case-by-case basis." n434

n432 See PDM at 49-50.

n433 See Comment 21 of this IDM.

n434 See CFS from Indonesia IDM at Comment 11.

The Department has experience with constructing a tier-three derived benchmark stumpage price based on log prices adjusted for the respondents' costs. n435 The Department explained this analysis in the Lumber IV First NAFTA Remand.

n435 See Lumber IV AR1 IDM at 17 ("We identified numerous factors affecting market conditions that needed to be adjusted for, inter alia, costs associated with the tenure contract, costs associated with accessing timber for harvesting, and costs of acquiring timber. In summary, the harvesting costs reported by harvesters of Crown and private timber in B.C. were deducted from market-determined log prices from the U.S. Pacific Northwest to calculate a "derived market stumpage price' to compare with Crown stumpage."); see also Lumber IV AR2IDM at 16 ("[W]e subtracted from the U.S. log prices all B.C. harvesting costs, including costs associated with Crown tenure for calendar year 2003, and profit."); see also CFS from Indonesia, CPP from Indonesia, and CUP from Indonesia.

It is generally accepted that the market value of timber is derivative

of the value of the downstream products… Lumber manufacturers start

with finished lumber prices and subtract their own, non-wood, production

costs to determine the maximum amount they would be willing to pay for

logs. The independent log seller, in turn, starts with the price of the

log it could receive, and subtracts harvesting and transport costs, to

arrive at the maximum it would be willing to pay for stumpage. The

landowner, in turn, will charge the maximum stumpage price the

independent logger would pay. n436

n436 See Lumber IV First NAFTA Remand at 11-12.

Using this analysis in Lumber IV., the Department found it appropriate to adjust the U.S. log prices for the respondents' direct and indirect costs associated with the tenure contract, with accessing timber for harvesting, and with acquiring timber. n437 Based on the facts and arguments on this record, for the final determination, the Department sees no reason to apply a different calculation methodology to determine whether BC stumpage prices are consistent with market principles. Therefore, in addition to the road, harvest, and hauling costs that the Department adjusted for in the Preliminary Determination, we have also adjusted for the respondents' reported silviculture and forest management costs. As explained above, these activities, and therefore the associated direct and indirect costs, are a condition of the tenure holder's or licensee's access to Crown timber and are directly tied to the BC Crown stumpage price.

n437 See Lumber IV AR1 IDM at 17.

Consistent with Lumber IV, n438 in addition to silviculture and forest management costs, the Department finds that it is also appropriate to adjust for other obligated costs that are required by the Crown in order for the respondents to access and harvest the Crown timber supply. These costs include annual forest rent, n439 waste stumpage charges, n440 and scaling costs. n441

n438 Id.; see also Lumber IV AR2 IDM at 16.

n439 See GBC Primary QNR Response, Part 1 at 132-133.

n440 Id. at 134.

n441 Id. at 159.

The Department does not agree with the petitioner that cost adjustments should not be granted for indirect costs or for G&A costs reported by the respondents with operations in British Columbia. The respondents must incur these costs in order to access and harvest Crown timber. The Department examined these costs at verification and found that the reported costs were tied to either the respondents' tenure obligations or to expenses relating to accessing, harvesting, or hauling timber to the mills. n442 Thus, adjusting for indirect costs and G&A expenses is consistent with the adjustments granted in Lumber IV and the methodology used to determine whether the government price is consistent with market principles under tier three of our benchmark hierarchy. n443

n442 See, e.g., Canfor Verification Report at 19 and Exhibit VE-11.

n443 See Lumber IV AR2 IDM at 109.

For the final determination, the Department is also granting an adjustment for cutting rights fees paid by the respondents to harvest Crown timber on the tenure held by another licensee. The Department concurs with the respondents that it is reasonable to account for a mark-up in its benefit calculations when the benefit is provided through an intermediary. In instances where the respondents purchase Crown stumpage rights from a third-party tenure holder or licensee, and the respondent is itself harvesting the standing Crown timber (or through a contractor), the respondent pays the tenure holder or licensee a fee in order to harvest the Crown timber. By charging a cutting rights fee, the tenure holder or licensee is capturing some of the benefit of the subsidized input. Therefore, the Department must adjust for the amount that the respondents must pay to the third-party tenure holder or licensee to best capture the amount of the benefit that is actually conferred upon the respondents.

Lastly, citing RZBC Group., Tolko argues that costs associated with tenure rights that the respondents have purchased from third-parties (i.e., tenures not granted to the respondents directly by the GBC, but purchased from third parties) should be included in the adjustments to the benchmark. Each of the respondents with operations in British Columbia has reported an expense relating to the associated cost of depletion and amortization of the tenures the respondents have purchased from third parties. Because this is a cost that the respondents had to incur in order to obtain this tenure, the respondents argue that the benefit the respondents received from stumpage purchases on these tenures should be offset by the portion of the benefit that was captured by the original tenure holder that sold the tenure rights to the respondent.

However, the Department disagrees with the respondents that the Department should make an adjustment for the associated costs of depletion and amortization of these tenures. For this specific cost adjustment, the respondents' reliance on the RZBC Group is misplaced. The CIT's decision in RZBC Group addresses a fact pattern where a private middleman purchased an input from a state-owned enterprise and then resold the input to the subject merchandise producers at the marked-up price. n444 In that context, the Court held that, "the middleman may skim some of the benefit by reselling the subsidized inputs at markup. . . if that marked up-cost that the final user pays is less than the market cost, the user still gets a benefit." n445 The same facts are not present here. Nothing on the record shows that the associated costs of depletion and amortization of tenures are related to a third-party tenure/license seller's "marked up-cost" when it sold the tenure/license to the respondents. To the contrary, Canfor, Tolko, and West Fraser explained that the associated costs of depletion and amortization of tenures are determined by the companies in their own financial reporting and not by the third-party tenure/license seller. n446

n444 Id.

n445 Id.

n446 See Tolko Supp QNR 1 Response at 2; see also Tolko Primary QNR Response at 184-85; see also Tolko Supp QNR 2 Response, Part 1 at 35-36. According to Tolko, "it typically has acquired its tenures and licenses through the acquisition of other companies in arm's-length purchase transactions. Since 1997, Tolko has accounted for these purchases by allocating a portion of the purchase price to the acquired timber tenures. It treats the timber tenures/licenses as an asset on its books, which, for renewable tenures, it then amortizes over an 80-year period. The amount reported in Row 8 as "Depletion and Depreciation/ Amortization of Timber Tenures Purchased from Third-Parties," reflects the timber tenure/license amortization expense Tolko recognized in fiscal year 2015 allocable to logs delivered to sawmills". See Canfor Primary QNR Response at Exhibit 17 at Annual Report 2015 at 52. According to Canfor, "[t]imber licenses are carried at cost less accumulated amortization. Renewable licenses are amortized using the straight-line method over 50 years, while non-renewable licenses are amortized over the period of the license." See also Canfor Verification Report, Exhibit 3 at 22-23. See also West Fraser Verification Report, VE-6 at 4051-4058.

Further, the record shows that the respondents record the timber tenure as assets on their financials once they purchase the tenure from third parties. n447 The associated cost of depletion and amortization of tenures reflect expenses related to amortization of an intangible asset, i.e. the value of long-term tenure, once the respondents have acquired the tenure rights from the third parties. As stated in Comment 27, we are not adjusting the PNW benchmark price for an amount reflecting the value for the long-term tenure. Thus, for these reasons, it would be distortive to adjust for the associated costs of depletion and amortization of those tenures.

n447 Id.

Comment 25: Whether the Department Should Account for Differences in Grading Systems in British Columbia and the United States

In the Preliminary Determination for the provision of stumpage for LTAR in British Columbia, the Department compared the respondents' stumpage purchases to log price data published by the WDNR. n448 The GBC, Canfor, and West Fraser argue that the lowest grades in the BC grading system include logs that are entirely outside of U.S. sawlog grades. n449 The GBC, Canfor, and West Fraser advocate that the Department should account for the differences in grading systems by applying ratios calculated in the BC Dual Scale Study to the respondents' purchases to ascertain sawlog and utility grades, then apply three different U.S. benchmark prices, i.e.., sawlog, utility, and blue stain.450

n448 See PDM at 52-53.

n449 See GBC Case Brief at 71-74; see also Canfor Case Brief at 29; see also West Fraser Case Brief at 42-44.

n450 Id.

The petitioner counters that the proposed adjustments for MPB damaged timber are unsupported by evidence. Specifically, the petitioner argues that price offers on the record from individual mills for blue stain logs are generally from mills that specialize in appearance grade products, while mills that produce lumber that is not sensitive to appearance pay significantly more for these logs and therefore are not reflective of the value of logs harvested from MPB damaged timber in British Columbia. The petitioner also argues that the value differential between MPB-killed and green logs is much smaller than the adjustment advocated by the BC respondents. n451

n451 See Petitioner Rebuttal Brief at 40-43.

Department's Position: As discussed above in Comment 19, the Department cannot confirm that the conversion factors generated by the BC Dual Scale Study were derived using a statistically valid sampling methodology. Because the ratios that the BC respondents propose using to differentiate sawlog and utility grades are derived from the underlying data generated by the BC Dual Scale Study, we are similarly unable to confirm their reliability. Therefore, we have not made the adjustment proposed by the BC respondents.

Further, with respect to the BC respondents' request that the Department incorporate blue stain log prices into its cross-border benchmark, we do not find that the available record evidence permits us to do so reliably in this investigation. In particular, the Department finds the prices for blue stained logs in the Jendro & Hart report were obtained for the purpose of this investigation and not reported in the ordinary course of business. n452 As we stated above in discussing the conversion factors generated by the BC Dual Scale Study, in instances where parties have presented a self-commissioned report conducted specifically in anticipation of an investigation for the Department's consideration, the Department must carefully examine the study to ensure that it is based on sound methodologies that guard against any bias. That is, the Department must evaluate whether any report placed on the record of a proceeding by an interested party is free of data and conclusions that were tailored to generate a desired result. With respect to the blue stain log prices reported by Jendro & Hart, the report indicates only that 13 companies with 20 sawmills in Washington, Idaho, and Montana, including all "major" sawmills in the area, were surveyed; n453 however the study does not explain how the companies participating in the survey were selected for inclusion in the report or how they were requested to present prices. For example, we do not have the underlying request that was submitted to these companies on the record, so we cannot evaluate whether the request was tailored to generate a specific result, nor does the record reflect whether only certain of the reported prices were included in the report. Therefore, the Department finds these prices are not reliable and we have not incorporated them into the benchmark prices. Additionally, parties have not provided evidence that the U.S. PNW log prices published by the WDNR do not already include blue stained log prices. As such, including these prices risks overstating blue stained log prices in our benchmark.

n452 See GBC Primary QNR Response, Part 1 at Exhibit BC-S-183.

n453 Id. at 47.

Consequently, the Department has continued to use only the WDNR sawlog benchmark prices in the final determination, as adjusted for costs incurred by the BC-based respondents to calculate the derived market stumpage prices. For an analysis of these cost adjustments, see Comment 24.

Comment 26: Whether the Department Should Adjust for a Non-Contract Profit Rate

In the Preliminary Determination, the Department made an adjustment to reflect the profit realized by non-contract logging companies. n454 The petitioner argues that the Department should not include an adjustment to the benchmark in British Columbia to account for profit because none of the respondents with operations in British Columbia conducted in-house harvesting. n455

n454 See PDM at 55.

n455 See Petitioner Case Brief at 29.

Department's Position: Based upon responses to supplemental questionnaires issued after the Preliminary Determination, the Department finds that, for each of the three BC respondents, the BC Crown stumpage purchases during the POI were harvested exclusively by contractors. n456 Accordingly, we determine that the reported costs of BC Crown purchases for the three respondents already reflect a profit component. Therefore, we are not making a cost adjustment in British Columbia for a non-contract profit rate for the final determination.

n456 See Canfor Supp QNR 4 Response at 47; see also West Fraser Supp QNR 3 Response at 16; see also Tolko Supp QNR 2 Response, Part 1 at 49.

Comment 27: Whether the Department Should Adjust the U.S. Benchmark Price to Account for Tenure Security

In the Preliminary Determination, the Department found that the GBC provided stumpage for LTAR to the respondents with BC operations during the POI, using log prices from the WDNR as a tier-three benchmark. n457 The petitioner argues the Department should adjust the U.S. benchmark price, which is based on monthly, short-term contracts, to account for the economic security respondents from British Columbia are assured through their long-term tenure agreements. n458 The GBC argues that the petitioner has provided a simplistic characterization of long-term tenure, and ignores the fact that BC tenure holders face considerable uncertainties related to long-term tenures, and the acquisition costs are not a benefit but a cost to the companies. Furthermore, the GBC argues that the petitioner's proposed method of quantifying the alleged value of any tenure security is unrelated to the alleged tenure security value, and instead simply reflects the amortized, historical costs of these companies' original acquisition of their tenures. n459

n457 See PDM at 20-21, 35-39, and 46-53.

n458 See Petitioner Case Brief at 22-27; see also Petitioner Rebuttal Case Brief at 74-75.

n459 See GBC Rebuttal Case Brief at 9-13.

Department's Position: In the Lumber IV investigation and 2nd administrative review, the petitioner made similar arguments with regard to the additional value bestowed on Crown tenure holders through the stable, steady, and secure supply of wood fiber. n460 However in the investigation and 2nd administrative review, the Department did not make a determination as to whether a countervailable benefit was provided by tenure security on the grounds that information on the record did not contain the data necessary to make an accurate quantification of any alleged benefit. n461 We further determined that without the necessary data on the record with which to quantify any benefits allegedly conferred by tenure security, there was no need to analyze whether a countervailable benefit could be conferred through tenure security. n462 Upon review of the information on the record of this investigation, we have reached the same conclusion.

n460 See Lumber IV Final Determination IDM at Comment 2; see also Final Results of 2nd AR IDM at Comment 60.

n461 Id.

n462 Id.

Specifically, while we recognize, in theory, that tenure security is inherently a subset of the overall value of the tenure, we find that the petitioner's proposed method of quantifying the alleged benefits is inaccurate and cannot serve as a basis for analyzing whether tenure security provides a benefit. n463 In particular, the petitioner describes the alleged benefits from long-term Crown tenure agreements as the protection from risks from new ***competitors*** for inputs, increasing timber prices through market ***competition***, or depriving a mill of its wood supply. n464 To measure this benefit, the petitioner proposes calculating a per cubic meter ratio using each respondent's timber amortization, which is the amortized cost of purchasing the timber harvesting rights, e.g., the cost of the Forest License or the Tree Farm License, and applying the ratio to the U.S. benchmark prices for comparison to the respondents' stumpage purchases. n465 However, the petitioner does not explain (nor can we discern) how these costs provide a reasonable measure of the intangible benefit allegedly conferred by the long-term harvesting rights held by the Crown tenure holders. Therefore, the Department has not made an adjustment to U.S. benchmark price to account for secure tenure rights as proposed by the petitioner.

n463 See Petitioner Case Brief at 25-27.

n464 Id. at 24.

n465 Id. at 27.

Comment 28: Whether Private Stumpage Prices in New Brunswick Should be Used as Tier-One Benchmarks

In the Preliminary Determination, we found that private prices for standing timber in New Brunswick are not market-based, and, accordingly, we did not use these private prices as tier-one benchmarks in calculating the respondents' benefit from the provision of New Brunswick stumpage for LTAR. Rather, because we determined that private stumpage prices in Nova Scotia are market-based, we used JDIL's purchases of standing timber from private lands in Nova Scotia as a benchmark for evaluating whether Crown-origin standing timber in New Brunswick was provided for LTAR.

The GNB and JDIL argue that the private stumpage market in New Brunswick is not distorted, and, as such, these private prices should be used as tier-one benchmarks. n466 Specifically, they argue that New Brunswick has a large, dynamic market, with thousands of woodlot owners and independent wood producers, as well as 36 parties who are licensed or sub-licensed to harvest timber on Crown lands. Further, they argue that the existence of"overhang" (i.e., Crown stumpage volume allocated to a licensee or sub-licensee that remains unharvested) indicates a healthy market in which licensees and sub-licensees can, and do, shift to purchasing more private stumpage when it is ***competitively*** priced. Additionally, they argue that the low CVD rate calculated for the New Brunswick stumpage for LTAR program in the Preliminary Determination and in SC Paper from Canada confirms the lack of significant market distortion in the province. Finally, JDIL argues that during 2015, the company paid higher prices for Crown softwood stumpage in New Brunswick than it paid for private softwood stumpage in New Brunswick.

n466 See JDIL Case Brief at 10-17; see also GNB Case Brief at 4-20.

In rebuttal, the petitioner disputes the GNB's and JDIL's characterization of the private stumpage market in New Brunswick and supports the Department's preliminary determination that private stumpage prices in New Brunswick are not usable as a tier-one benchmark. n467

n467 See Petitioner Rebuttal Brief at 21-23.

Department's Position: For the reasons discussed below, we continue to find that private stumpage prices in New Brunswick are distorted, and are not suitable for use as tier-one benchmarks.

In evaluating distortion of the New Brunswick stumpage market in the Preliminary Determination, we relied upon findings in the SC Paper from Canada - Expedited Review, for which the POR was calendar year 2014, and in which the Department determined that private New Brunswick stumpage prices were not "market-determined" and therefore did not meet the criteria under 19 CFR 351.511(a)(2)(i) for use as tier-one benchmark prices. n468

n468 See SC Paper from Canada - Expedited Review IDM at Comment 23.

Specifically, in SC Paper from Canada - Expedited Review, the Department concluded that the evidence on the record established that the GNB held a majority share of the market for stumpage in New Brunswick, and that it restricted eligibility for Crown stumpage rights to companies that operate pulp and paper or lumber mills. n469 Moreover, the Department found that the evidence established that private woodlot owners supplied a much smaller share of the New Brunswick stumpage market than the government, and that the mills' status as the dominant consumers of stumpage creates an oligopsony effect, such that both private woodlot owners and the Crown are responsive to price-setting behavior by the dominant mills. n470 Further, the Department found that private woodlots were a supplemental source of supply for the tenure-holding mills in New Brunswick because an "overhang" existed with regard to the volume of Crown-origin standing timber allocated to tenure holders. n471 As such, the Department concluded that tenure-holding mills could harvest additional Crown timber if needed and, thus, given this additional supply of Crown-origin standing timber, private woodlot owners served mainly as a supplemental source of supply to the large mills and, consequently, could not expect to charge prices higher than Crown stumpage prices. n472

n469 Id.

n470 Id.

n471 Id.

n472 Id.

In the Preliminary Determination, we found that the information on the record of this investigation was consistent with SC Paper from Canada - Expedited Review. n473 Specifically, the sources relied upon in SC Paper from Canada - Expedited Review. n474 continued to demonstrate that the GNB is the dominant supplier, and the mills remain the dominant consumers, of stumpage in New Brunswick, such that the oligopsony effect persists in the province. Further, similar to SC Paper from Canada - Expedited Review, the GNB continued to account for a plurality of the softwood harvest volume during the 2015-2016 harvesting season. Specifically, Crown lands accounted for 49.9 percent of the softwood volume during this time period. n475 Additionally, we continued to find that consumption of Crown-origin standing timber by sawmills is concentrated among a small number of corporations, and that the corporations that dominate the consumption of Crown-origin standing timber also dominate the consumption of standing timber harvested from private lands. n476 Finally, consistent with SC Paper from Canada - Expedited Review, we found that tenure-holding corporations are not consuming the full volume of Crown timber allocated to them for harvest during the POI. Specifically, we found that total "overhang" of Crown volume was approximately 47 percent of the softwood Crown harvest during the Fiscal Year 2015-2016. n477

n473 See PDM.

n474 Specifically, the Report of the Auditor General - 2008, the 2012 PFTF Report, and the Report of the Auditor General - 2015. Id.

n475 The private Forest accounted for 38.1 percent; First Nation accounted for 3.25 percent; and log imports (from the United States another Canadian Provinces) accounted for 8.7 percent. Id. Further, we found that the Crown-origin standing timber's share of the harvest volume increases to 54.7 percent when examining standing timber that originated in the province. Id.

n476 We preliminarily found that aggregating the sawmill data by corporation is most useful to our analysis, because sawmills act as members of corporate families rather than as stand-alone entities. Id. No parties have argued that aggregating sawmill data by corporation is not appropriate.

n477 Id.

For purposes of this final determination, for the same reasons found in the Preliminary Determination and SC Paper from Canada - Expedited Review, we continue to find that private New Brunswick stumpage prices are not market-based, and therefore do not qualify as tier-one benchmark prices. Both the GNB and JDIL have submitted comments regarding the private stumpage market in New Brunswick. However, as discussed further below, neither the GNB nor JDIL have provided any new arguments that would cause us to reconsider this finding. Further, there is no new information on the record that would cause the Department to come to a different determination regarding distortion in the New Brunswick stumpage market. In fact, based on the updated information provided by the GNB at verification, the fiscal year data indicate that Crown lands accounted for a slight majority of the softwood timber harvest volume in the province, which is greater than the plurality of the total harvest volume that we found for the Preliminary Determination. n478

n478 See GNB Verification Report, Exhibit VE-1 at Table 3. Total Volume of Timber Sourced from Crown Land: 2,675,207 m3 divided by total volume 5,266,858 m3 (Total Volume of Timber Sourced from Crown Land: 2,675,207 m3 + Total Volume of Timber Sourced from Private Woodlots Land: 2,675,207 m3 + Total Volume of Timber Sourced from USA or Other Canadian Provinces: 457,914 m3 + Total Volume of Timber Sourced from First Nations: 169,385 m3) equals 50.79 percent.

In their briefs, both the GNB and JDIL argue that the private stumpage market in New Brunswick is not distorted and that New Brunswick private stumpage prices can be used as a tier-one benchmark. Specifically, they argue that the stumpage market in New Brunswick is "large and robust," there is no "oligopsony" that distorts the private market, and that unsold crown timber (i.e., overhang) does not distort the market. As discussed below, we disagree with these arguments.

In arguing that the private New Brunswick market is large and robust, both the GNB and JDIL point to facts on the record that they claim support this argument. n479 However, neither the GNB nor JDIL have provided any information that addresses the concerns regarding the GNB's harvest production in the province, or the concentration of consumption of Crown and private timber among a small number of corporations. Additionally, both the GNB and JDIL argue that Crown-origin softwood timber accounts for only 47.7 percent of total supply in the province in 2015. The GNB contends that the difference between the 47.7 percent figure and the 49.9 percent figure relied by the Department in the Preliminary Determination was based on an analysis that focused on only saw material (and not all fiber inputs, inclusive of pulpwood, chips, etc.). n480

n479 For instance, in its case brief, the GNB points to the increasing share that private lands accounted for during the POI, the declining Crown supply as a proportion of consumption in the POI, and the Crown stumpage sold through independent third parties. See GNB Case Brief at 7, 9, and 11.

n480 Id. at 9.

As an initial matter, we find that the Department's methodology to calculate market share is appropriate for purposes of this investigation. Our objective in performing this market share calculation was to determine the source (i.e., Crown, private, import) of the logs that could be used in the production of subject merchandise. On that basis, we have calculated market share using the volume of logs from each source (i.e., Crown, private, import) entering sawmills, because these logs are used in the production of softwood lumber. Including other inputs that would not be used in the production of softwood lumber, such as pulpwood or chips, would skew the results, and would not reflect the market conditions for the producers of subject merchandise. As such, our decision not to include such inputs in our analysis of the market share of various sources of softwood lumber is reasonable. Further, as noted above, based on corrections to the harvest data at verification, the record indicates that the Crown-origin timber accounts for the majority of the stumpage harvest volume in New Brunswick. However, regardless of whether the total Crown-origin volume is just above or just below 50 percent, the Department's finding regarding the private stumpage market in New Brunswick is not based solely on the GNB's market share. The CVD Preamble states that government involvement in the market "will normally be minimal unless the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market." n481 However, the Department does not apply a per se rule that a government majority market share equates to government distortion of that market. n482 Rather, the Department will consider any evidence on the record of other relevant factors or measures that may distort a market. n483 As such, consistent with the CVD Preamble and our practice, while we have considered the share of GNB production as one factor in evaluating whether the New Brunswick market is distorted, we have also evaluated other record information in making this determination, as discussed below.

n481 See CVD Preamble, [*63 FR at 65377.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n482 See, e.g., CRS from Russia IDM at 52-56; see also Final Results of 1st AR IDM at 94-96.

n483 See, e.g., Aluminum Extrusions from the PRC First Review IDM at 27.

The GNB argues that the three reports relied upon by the Department in the Preliminary Determination and in SC Paper from Canada - Expedited Review to conclude that the New Brunswick stumpage market is distorted (i.e., the Report of the Auditor General - 2008; the Report of the Auditor General - 2015; and the 2012 PFTF Report) simply raise questions about the distortion of private stumpage prices in New Brunswick, but do not provide any firm conclusions. As an initial matter, we note that these reports were prepared by the GNB in the ordinary course of business. As such, the statements made in these reports were made by the GNB based on an evaluation of the facts discussed on those reports. For example, the Department relied upon the following statements from the Report of the Auditor General - 2008, to find that that the leverage of private mills as dominant consumers suppresses prices from private woodlots, and that those suppressed private prices lead to an artificially low "market-based" price for Crown stumpage:

The fact that the mills directly or indirectly control so much of the

source of the timber supply in New Brunswick means that the market is

not truly an open market. In such a situation it is not possible to be

confident that the prices paid in the market are in fact fair market

value.

… [T]he royalty system provides an incentive for processing

facilities to keep prices paid to private land owners low… n484

n484 See PDM at 32; see also Petition at Exhibit 228.

These statements (in the "Analysis" section of the report), were provided following a presentation of key facts (in the "Understanding Royalty Timbers" section of the report) about the New Brunswick market. These key facts included details regarding the percentage of land holdings, the total harvest volume, the royalty fees paid, as well as a discussion of the process to set royalty rates. As such, the Department disagrees with the GNB's statement that these statements "merely raise questions" and do not provide firm conclusions. Instead, we find that these GNB-produced reports provide reliable analyses of facts pertaining to private stumpage prices in the province, and that these analyses were conducted by individuals who were familiar with the stumpage market in New Brunswick. Therefore, the Department is continuing to rely on information in these reports for purposes of evaluating whether the private stumpage market in New Brunswick provides prices that meet the criteria under 19 CFR 351.511(a)(2)(i) and therefore constitute a reliable benchmark.

Further, the GNB has not provided any information that contradicts the essential facts and conclusions made in these documents. Moreover, although the GNB has argued that the Department should not rely on statements from these reports, the GNB it self has relied upon facts and general statements from these reports in making arguments in its case brief. n485

n485 For example, the GNB sites to the 2012 PFTF Report. See GNB Case Brief at 16.

Finally, the GNB points to a report prepared by Professor Brian Kelly (i.e., the Kelly Report), that "dispels the speculative concern that a small number of large New Brunswick mills, do, or can, artificially suppress prices." n486 However, as noted in the GNB's case brief, the Kelly Report was commissioned by the GNB for the purposes of this investigation. The Federal Circuit, in evaluating whether a party's claim had been sufficiently corroborated with evidence in a patent case, opined that "contemporaneous documentary evidence provides greater corroborative value" in determining whether a party's litigation "story is credible." n487 This is because evidence preceding the litigation eliminates "the risk of litigation-inspired fabrication or exaggeration" that may come from later-developed evidence, intended to corroborate the party's story. n488 We find that the Federal Circuit's concerns are equally applicable to evidence created for the purpose of an adjudicatory administrative proceeding such as this one. Although we consider all evidence on the record of a proceeding, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in the ongoing administrative proceeding. Because the Kelly Report was prepared for the express purpose of submission in this investigation, we find that it is at "risk of litigation-inspired fabrication or exaggeration," which diminishes its weight. Further, at verification, the GNB was unable to provide the Department with the guidelines or parameters that it provided to Mr. Kelly which would detail the goals or objectives of, and reveal the assumptions behind, the report. n489 Accordingly, we have been unable to verify that, in directing Mr. Kelly to prepare this report, the GNB sought to avoid "litigation-inspired fabrication or exaggeration." n490 In contrast with the Kelly Report, the reports discussed in the preceding paragraphs'the Report of the Auditor General - 2008; the Report of the Auditor General - 2015; and the 2012 PFTF Report'were prepared in the GNB's ordinary course of business prior to this investigation, and, thus, are not tainted by the "risk of litigation-inspired fabrication or exaggeration." n491 Thus, the Department continues to give greater weight to the Report of the Auditor General - 2008; the Report of the Auditor General -2015; and the 2012 PFTF Report than it does to the Kelly Report.

n486 See GNB Case Brief at 14-15.

n487 See [*Transweb, 812 F.3d at 1295, 1301-02.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5J29-4F31-F04B-M0B8-00000-00&context=)

n488 See [*Sandt Tech, 264 F.3d at 1344, 1350-51.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XR-10J0-003B-935Y-00000-00&context=)

n489 See GNB Verification Report at 10 ("The Department asked the GNB officials to provide any correspondence the GNB and/or its counsel had with Mr. Kelly regarding the objectives or guidelines regarding this study. The Department was told that all communication between Mr. Kelly, the GNB, and the GNB's counsel was subject to attorney-client privilege. As such, the GNB did not provide the requested correspondence for our review.")

n490 See [*Sandt Tech, 264 F.3d at 1350-51.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XR-10J0-003B-935Y-00000-00&context=)

n491 Id.

Further, we disagree with the respondents' argument that the existence of"overhang" indicates a healthy market. Instead, we find that the dominance of the mills (in particular, the JDIL mills), coupled with the overhang, indicates that the prices that the mills are willing to pay for private stumpage are limited by the availability of additional volume of Crown stumpage at prices set by the Crown. Specifically, as discussed above, the Department finds that the Crown tenure holders harvested significantly less than their allocated volume of Crown-origin standing timber during calendar year 2014: on average, tenure holders harvested only approximately 47 percent of their Crown-origin standing timber allocation during calendar year 2014. Therefore, the record evidence demonstrates that the mill owners can source timber from alternative sources (i.e., Crown land allocations, and industrial freehold land) if the prices from those sources are more advantageous than the prices available from private woodlot owners in New Brunswick. The mills also have the incentive not to purchase timber from private woodlots unless the price is lower than the Crown prices, because these private purchase prices form the basis of the New Brunswick Crown stumpage prices. The mills' ability to source timber from outside of the private woodlots means that mills possess the leverage to keep prices on private woodlots low, and they have an interest in doing so beyond their mere ability to source from private woodlot owners for low prices. As such, we find that, because tenure-holding mills had ready access to, and could harvest, additional Crown-origin standing timber if private woodlot owners mainly served as a supplemental source to large mills and, thus, could not expect to charge more than Crown stumpage prices. Neither the GNB nor JDIL has provided or cited to any information on the record that would cause the Department to reevaluate its finding in the Preliminary Determination that a small group of mills dominate the industry in the province, or that significant overhang exists within the province, leading to the circular price suppression of private and Crown stumpage prices.

Both the GNB and JDIL argue that significant trade of timber between New Brunswick and other markets demonstrates the openness of the timber market in New Brunswick. GNB specifically notes that 6.9 percent of softwood roundwood consumed in the province is imported, of which 4.4 percent came from Maine. n492 We agree that, typically, when faced with a high degree of imports, the Department finds that private prices in the market are not distorted by government involvement in that market. However, here, we find the opposite: that the ability of mills to import logs provides the mills with even more leverage over the New Brunswick private stumpage market. Specifically, we found that a significant volume of the imports was comprised of JDIL's imports from its own privately held land in Maine, n493 i.e., these imports did not represent arm's-length transactions. Further, in SC Paper from Canada - Expedited Review, the Department found that JDIL is the largest landowner in Maine. n494 Given these investigation-specific facts, rather than demonstrating that imports are an indication of ***competition*** in the market, we find that these imports are another indication that the large mills can obtain timber from several sources other than private woodlot owners in New Brunswick (including, in JDIL's case, from its own private holdings in other jurisdictions) if private woodlot owners in New Brunswick do not price their timber at sufficiently low prices. As such, we disagree with the GNB's and JDIL's conclusion that trade between New Brunswick and other jurisdictions is indicative of an open timber market in New Brunswick, and instead conclude that, in this instance, these non-arm's-length imports are among the factors that suppress private timber prices in New Brunswick.

n492 See GNB Case Brief at 13;

n493 See GNB NFI Submission at Exhibit NB-STUMP-22 (FY 2015 Timber Utilization Report).

n494 See SC Paper from Canada - Expedited Review IDM at Comment 23.

Both the GNB and JDIL alleged that Crown stumpage prices in New Brunswick exceed private stumpage prices. Specifically, the GNB compared timber prices for Crown stumpage, listed in Schedule A of the Timber ***Regulation*** 86-160, n495 to the results of the private stumpage survey for New Brunswick covering October 2014 to September 2015. n496 JDIL stated that the company, on average, paid higher prices for Crown stumpage than it did for private stumpage in New Brunswick. n497 We find both of these arguments to be premised on misleading facts, and, thus, unpersuasive.

n495 See GNB Primary QNR Response at Exhibit NB-STUMP-2.

n496 Id. at Exhibit NB-STUMP-11.

n497 See JDIL Minor Corrections Submission at Attachment 2.

We begin by addressing the GNB's comparisons between the Crown stumpage prices (in Schedule A of the ***regulations***) and the private stumpage prices reported in the survey. Specifically, the GNB states that "Crown prices consistently exceed private stumpage prices," and point to a record exhibit indicating prices of SPF sawlogs and studwood from Crown land were higher than the prices charged for private stumpage of SPF sawlogs and studwood. n498 First, a review of these price data shows that the private stumpage prices for non-SPF species were frequently higher than the stumpage prices charged on Crown land. n499 As such, we find the GNB's implication that Crown prices always exceed private stumpage prices to be inaccurate. Second, the Department has significant concerns about the accuracy of the New Brunswick private stumpage price survey itself. Specifically, the survey states that it does not include the volume of timber harvested from primary forest produced by woodlot owners/operators or the volume of stumpage sold through lump-sum transactions. n500 The GNB estimates that these two types of transactions represent approximately 50 percent of the total (private) harvest in the province. n501 The omission of these two significant types of transactions from the New Brunswick private stumpage price survey leads us to conclude that the survey is incomplete, and the results of the survey are skewed by the survey's exclusion of these transactions and the significant stumpage volume associated with them. In light of these deficiencies in the New Brunswick private stumpage price survey, we conclude that the survey is not an accurate source against which to compare the Crown stumpage prices'and, thus, we find the GNB's arguments on the basis of this comparison to be unpersuasive.

n498 See GNB Case Brief at 10; see also GNB NFI Submission 1 at Exhibit NB-STUMP-25.

n499 For example, the AUV for Cedar sawlogs from Crown land was [*CAD 17*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WYB-23M0-003S-J30T-00000-00&context=) per cubic meter (see GNB Primary QNR Response at Exhibit NB-STUMP-2) while the AUV for Cedar sawlogs from private land was [*CAD 19.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WYB-23M0-003S-J30T-00000-00&context=)30 per cubic meter. Id. at Exhibit NB-STUMP-11, page 13.

n500 Id. at Exhibit NB-STUMP-11, page 9.

n501 Id.

Further, notwithstanding these concerns regarding the excluded transactions when calculating private stumpage prices, the Department finds that these private prices are not independent of the crown stumpage prices charged by the GNB and thus distorted. Specifically, as discussed above, the existence of the GNB as the dominant supplier of stumpage, and the mills as the dominant consumers of stumpage in New Brunswick results in an oligopsony in the province. As such, this results in private stumpage prices in New Brunswick that are responsive to the price-setting behavior by the Crown and the mills.

We next address JDIL's argument that the company, on average, paid more per cubic meter for Crown stumpage than it paid for private stumpage in New Brunswick during the POI. To support its argument, JDIL constructs weighted-average prices of stumpage on New Brunswick Crown land and its private purchases in New Brunswick, and compares these two prices. n502 According to JDIL, that the company paid more, on average, per cubic meter for Crown stumpage alone should dispel any notion that GNB involvement in the stumpage market significantly distorts private market prices. We disagree with JDIL's argument. First, the prices paid by one company for an input (in this instance, stumpage) are not a dispositive indication that there is no distortion in the entire province (or country) in the market for that input.

n502 See JDIL Case Brief at 12 (Public Version), referencing JDIL Minor Corrections Submission at Attachment 2.

Second, the Department finds that JDIL's presentation of the facts is misleading. As mentioned above, JDIL constructed weighted-average prices of stumpage on New Brunswick Crown land and its private purchases in New Brunswick to demonstrate that it paid approximately C$6 more per cubic meter for Crown stumpage than it paid for private stumpage. n503 These weighted averages were calculated by dividing the total net value paid for stumpage by the total volume purchased (excluding third-party purchases). However, the figures calculated by JDIL include stumpage quantities and values for all inputs, including chips, pulpwood and other materials that are less expensive than inputs for softwood lumber, and that are not used in the production of subject merchandise. Further, the purchases of these cheaper inputs that are not used in the production of subject merchandise comprise a larger percentage of JDIL's private New Brunswick purchases than does stumpage for production of softwood lumber. Thus, the inclusion of these cheaper inputs for non-subject merchandise reduces the AUV for private stumpage prices that JDIL has calculated. Further, the record demonstrates that when comparing the Crown and private stumpage purchases for the inputs used in the production of softwood lumber, the company paid less for its Crown stumpage purchases than for its private purchases. n504

n503 See JDIL Case Brief at 12 (Public Version).

n504 A full discussion of this analysis is not possible without reference to proprietary data; a full discussion of this data is included in JDIL's Final Calculation Memorandum. See JDIL Final Calculation Memorandum.

Finally, the GNB and JDIL argue that the CVD rate for New Brunswick stumpage, calculated in the Preliminary Determination and in SC Paper from Canada, confirms the lack of significant market distortion in the province. n505 As an initial matter, the rate calculated for this program in both the Preliminary Determination and in SC Paper from Canada is greater than measurable, and, thus, it cannot be deemed not significant. Further, we would not base our finding of market distortion for an entire province or country on the rate calculated for an individual company within that province or country. Accordingly, we find that the CVD rate for New Brunswick stumpage calculated for JDIL in the Preliminary Determination, and for Irving in SC Paper from Canada, is not an appropriate indicator of whether private prices for softwood stumpage in the province are distorted.

n505 In the Preliminary Determination, we calculated a stumpage rate of 1.62 percent. See, e.g., PDM at 54. In SC Paper from Canada, we calculated a stumpage rate of 0.23 percent. See, e.g., SC Paper from Canada IDM at 8.

Comment 29: Whether the Department Should Use the New Brunswick Survey as a Benchmark for Stumpage for LTAR

In the Preliminary Determination, the Department used private stumpage prices from Nova Scotia as a tier-one benchmark for purposes of determining whether Crown stumpage in New Brunswick, Quebec, Alberta, and Ontario was provided for LTAR. n506 The GNB argues that the Department should use prices from the New Brunswick private stumpage survey as a tier-one benchmark, instead of the Nova Scotia private stumpage prices. n507 It notes that the period for which the New Brunswick private stumpage survey reports pricing data overlaps nine months of the POI. n508 It further claims that the NB survey is reliable, and notes that an independent government agency, the New Brunswick Forest Products Commission, conducted the survey and Price water house Coopers audited the survey. n509 Finally, the GNB points out that the Department used New Brunswick private price data from an earlier iteration of this survey as the stumpage benchmark for New Brunswick in Lumber IV. n510

n506 See PDM at 42.

n507 See GNB Case Brief at 20.

n508 Id.

n509 [*Id. at 20-21.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WYB-23M0-003S-J30T-00000-00&context=)

n510 [*Id. at 20.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3WYB-23M0-003S-J30T-00000-00&context=)

The petitioner maintains that the Department should not rely on this survey for the benchmark, n511 because it is unlikely to be representative of overall timber pricing in New Brunswick. It claims that private market timber accounts for only about 20 percent of total softwood consumption in the province during the POI. n512 The petitioner further claims that the market for the sale of private stumpage is characterized as an oligopsony, a situation in which there are only a few large sawmill purchasers and, through their dominance in the market, those purchasers distort the pricing of private stumpage. n513

n511 See Petitioner Rebuttal Brief at 21.

n512 Id.

n513 Id.

Department's Position: We continue to determine that the prices from JDIL's purchases of private stumpage in Nova Scotia are the appropriate benchmark against which to measure the adequacy of remuneration of New Brunswick Crown-origin stumpage, rather than New Brunswick private stumpage prices. In accordance with 19 CFR 351.511(a)(2)(i), the Department normally seeks to measure the adequacy of remuneration for a good using, as a benchmark, "market-determined price[s]" from "actual transactions in the country in question." These prices may include "prices stemming from actual transactions between private parties." n514 However, when private prices are distorted by non-***competitive*** factors, those prices are not market-determined, and thus are not an appropriate benchmark against which to measure the adequacy of remuneration.

n514 See 19 CFR 351.511(a)(2)(i).

We agree that, in Lumber IV., the Department used private stumpage data sourced from a prior iteration of the same New Brunswick private stumpage survey currently on our record. n515 However, Lumber IV was conducted more than a decade ago, n516 and thus private prices that, at that time, were market-determined may not have remained market-determined in 2015, if other economic forces arose in the intervening decade. To that end, to determine whether the New Brunswick private stumpage prices were distorted during the POI of this investigation, the Department obtained more recent information concerning New Brunswick's private stumpage prices from the Report of the Auditor General - 2008 and the Report of the Auditor General -2015. n517 As discussed in Comment 28, these reports describe non-market factors that have a distortive effect upon New Brunswick's private stumpage prices through the POI, such that private stumpage prices in the province are not market-determined. n518 The Department relied upon these reports when it found that New Brunswick's private stumpage prices were distorted in the Preliminary Determination and in SC Paper from Canada - Expedited Review, and, thus, that the private stumpage prices identified in the New Brunswick private stumpage survey were not a suitable tier-one benchmark under 19 CFR 351.511(a)(2)(i). Because, for the reasons stated in Comment 28, we continue to determine that the New Brunswick stumpage market is distorted, and we cannot use these New Brunswick private stumpage data as a tier-one benchmark. Thus, for this final determination, we continue to use the prices from JDIL's purchases of private stumpage in Nova Scotia as a market-determined tier-one benchmark to measure adequacy of remuneration for stumpage in New Brunswick.

n515 See Lumber IV Final Determination.

n516 Id.

n517 See PDM at 32-33.

n518 Id.

Comment 30: Whether Stumpage for Ontario Crown Timber Was Subsidized During the Period of Investigation

The GOO argues that, pursuant to 19 CFR 351.51 l(a)(2)(i), the Department is required to compare the stumpage rates charged by the GOO with a market-determined price "resulting from actual transactions in the country in question." n519 The GOO argues that the Department's use of private stumpage prices in Nova Scotia as a benchmark in the Preliminary Determination is not legally permissible because those prices do not reflect the prevailing market conditions in Ontario, and the Department made no adjustments that would render the Nova Scotia benchmark comparable to Ontario's market. n520 The GOO argues that the Department has acknowledged that there are significant differences between the various provincial stumpage markets in Canada, and it has consistently evaluated the subsidization of stumpage on a province-by-province basis. n521 The GOO has provided the Department with extensive evidence showing that the private timber market in Ontario is not distorted by Crown timber, and it has submitted prices of actual private market transactions in Ontario. n522 Accordingly, the Department must compare Ontario's Crown stumpage rates with private timber transactions in the province, which would reveal that Ontario Crown timber was not provided for LTAR. n523

n519 See GOO Case Brief at 5-6.

n520 Id. at 8-9; see also PDM at 30-31 and 56.

n521 See GOO Case Brief at 8.

n522 Id. at 6-7.

n523 Id. at 7.

The GOO further argues that the Department failed to adhere to its statutory requirement under section 771(5)(E)(iv) of the Act, which provides that "the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided." n524 In the Preliminary Determination, the Department calculated the adequacy of remuneration for Ontario Crown stumpage on the basis of prices for timber harvested in Nova Scotia, a province more than 1,000 miles away from Ontario and which, the GOO argues, has a different type of forest, climate, tree species, and transportation infrastructure from what is found in Ontario. n525 The GOO notes that the NAFTA Panel which reviewed the Lumber IV Final Determination found that the Department must base its benchmark calculations on the "prevailing market conditions for the provision of stumpage in Ontario." n526

n524 Id. at 10-13.

n525 Id. at 13.

n526 Id. at 12-13 (citing to NAFTA June 7, 2004, Panel Decision at 19).

The petitioner argues that the residual demand curve for timber in Ontario is distorted because Ontario sawmills always have the option of harvesting more Crown timber at the GOO's administered price or purchasing private timber at prices that are distorted by the Crown-administered price. n527

n527 See Petitioner Rebuttal Brief at 26.

Department's Position: As fully discussed in Comment 31,we continue to find that the stumpage market in Ontario is distorted. Therefore, there is no viable tier-one benchmark available within Ontario. Further, we continue to find that the Nova Scotia stumpage market is comparable to the other eastern Canadian provinces, including Ontario. See Comment 40. Furthermore, we continue to find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices in Canada, the country providing stumpage, and, thus, the NS Survey prices are appropriate prices to serve as a tier-one benchmark. See Comment 39.

Comment 31: Whether Ontario's Private Market Is Distorted and Whether Ontario's Private Prices Are an Appropriate Benchmark

Whether the Relative Size of the Ontario Private Market Affects the Validity of Private Market Prices

In the Preliminary Determination, the Department found that, because the private market for standing timber in Ontario constituted only 3.5 percent of Ontario's timber market during the POI, private timber prices in the province largely track the Crown stumpage rates set by the GOO. The Department therefore concluded that Ontario private market prices are not market-determined and cannot be used as a tier-one benchmark. n528 The GOO argues that the Department improperly relied on the CVD Preamble when analyzing whether the GOO's share of the Ontario timber market distorted that market in the Preliminary Determination, because the CVD Preamble only suggests that when the government provides a majority or a substantial market share of a good, the government's presence may distort the market, but does not require such a finding. The GOO contends that, in Lumber IV, a NAFTA panel rejected the claim that "significant involvement by the government in the market, by itself, serves as a basis for rejecting the first regulatory tier, without sufficient analysis of whether and how such involvement has distorted actual transaction prices." n529 Precedent from both the WTO and the CIT supports the NAFTA panel's holding. n530

n528 See PDM at 31.

n529 See GOO Case Brief at 23.

n530 Id. at 23-24, citing to Borusan; WTO Appellate Body Decision - HRS from India at para. 4.156; and WTO Appellate Body Decision - Certain Products from the PRC, at para. 4.51.

The GOO argues that neither the Department nor the petitioner provided sufficient economic analysis to support the claim that prices in Ontario's private market are influenced by Crown stumpage prices, and thus the Department should rely on the Hendricks Report to find that the Ontario timber market is not distorted. The Hendricks Report found that "license holders are harvesting at rates below the planned harvests specified in their forest plans" and that "sawmills in Ontario are operating at below capacity," and therefore concluded that the Ontario Crown timber supply does not impact the value of private timber stands. n531 Furthermore, the GOO argues that the transactions in the MNP Ontario Survey demonstrate that private timber purchases were made when Crown timber was available for harvest and sawmills were not operating at full capacity, and that there was demand for private timber at prices above the prices for Crown timber, both of which support the conclusion that Crown timber prices did not affect private prices. n532

n531 See GOO Case Brief at 21-22.

n532 Id. at 22.

Whether Ontario's Private Market Sales Are an Appropriate Benchmark

In the Preliminary Determination, the Department determined that private stumpage prices in Ontario were not market determined and, consequently, the Department used private timber prices from Nova Scotia as a benchmark to determine whether the GOO provided standing timber for LTAR. n533

n533 See PDM at 30-31 and 56.

The GOO argues that private timber prices are market driven because the Crown places no limits on the harvest or sale of standing timber on private stands, and because mills and private suppliers owners operate in a ***competitive*** market with multiple potential buyers. n534 The GOO cites to the Hendricks Report, which examines whether the supply of Ontario Crown timber can affect the prices for private timber in the province. n535 The price of private softwood timber stands in Ontario is derived from the value of the end-products that can be manufactured from timber; therefore, the report examines whether the supply of Ontario Crown timber can affect the price of softwood lumber end-products. The report notes that softwood lumber prices in Toronto and Chicago are highly correlated and concludes Canada and the United States are in the same softwood lumber market. n536 Given that Ontario's share of the U.S. softwood lumber market is very small (approximately two to three percent over the past ten years), the report concludes that Ontario timber harvesters, as well as sellers of private timber and Crown timber in Ontario, are price takers (i.e., sellers of private and Crown timber in Ontario are unable to influence the price of products by withholding their goods from the market, and harvesters of Ontario timber are unable to influence the price of timber by adjusting their harvest volumes). n537 Given that private timber is derived from the value of lumber end-products, and given that the supply of Ontario Crown timber is too small to influence prices in the North American softwood lumber market, the Hendricks Report concludes that Ontario's Crown timber supply cannot influence the price of private timber stands in Ontario. As a result, the Hendricks Report concludes that private stumpage prices in Ontario are a valid benchmark for Ontario Crown stumpage.

n534 See GOO Case Brief at 15-16.

n535 Id. at 14-15 (citing to the Hendricks Report).

n536 Id. at 20.

n537 Id. at 22.

The GOO argues that the Department is required under its ***regulations*** and under the URAA to compare Ontario's Crown stumpage prices with private stumpage prices in Ontario, and the GOO proposes that the Department use private prices in the MNP Ontario Survey as a tier-one benchmark. n538 Both MNP LLP and the author of the Hendricks Report analyzed the private transaction data collected in the MNP Ontario Survey and concluded that participants in the private timber market in Ontario exhibit behavior consistent with that of price takers in a ***competitive*** market. n539

n538 Id. at 13-14 and 31 (citing to the MNP Ontario Survey).

n539 Id. at 18.

While the GOO argues that private timber prices in Ontario are market driven because the market is composed of price takers, the petitioner notes that the Department rejected virtually the same argument in Lumber IV. n540 In the Lumber IV Final Determination, the Department observed that although a market may consist of participants who are price takers, it is important to evaluate whether those participants are taking the price from one dominant market participant. n541 The Department found in Lumber IV that the Crown was the overwhelmingly dominant market participant in Ontario and was effectively setting the price of stumpage in the province, both directly (in the market for Crown-origin timber, through an administered Crown stumpage rate), and indirectly (in the private market, where private stumpage rates were derived from the subsidized prices in the much larger Crown stumpage market). n542

n540 See Petitioner Rebuttal Brief at 25.

n541 Id. at 25-26 (citing to Lumber IV Final Determination IDM at 98).

542 Id. at 25-26.

Whether the Level of Concentration of the Ontario Timber Market Affects the Validity of Private Market Prices

In the Preliminary Determination, the Department found that the concentration of the Crown harvest among a small number of companies gives these companies substantial market power over sellers of private timber. n543 The GOO argues that the Department's assertion is not supported by economic analysis or evidence on the record. The GOO points to the Hendricks Report, which argues that a ***competitive*** timber market exists when as few as two mills have similar costs and are located near sellers of timber. n544 According to the GOO, the record evidence indicates that each private timber owner in Ontario has several mills that could be potential buyers, and that private timber stands in northern Ontario are within 200 kilometers of three or more sawmills, while private timber stands in southern Ontario are within 200 kilometers of 20 or more sawmills. n545

n543 See PDM at 31.

n544 See GOO Case Brief at 25 (citing to the Hendricks Report at paragraph 99).

n545 Id. at 25 (citing to the Hendricks Report at paragraph 17).

Whether the Department's "Findings" With Regard to "Allocated Volumes" are Confused and Mischaracterize the Ontario Timber Market

In the Preliminary Determination, the Department found that the majority of tenure holders in Ontario purchased a significant amount of standing timber above their allocated tenure volumes, including certain harvesters which exceeded their annual allocated tenure volume by as much as 28.4 percent during the POI. n546 The Department preliminarily concluded that the tenure holders' ability to consume beyond their allocated volume reduced the need for those tenure holders to procure timber from non-Crown sources, such as private timber sellers. n547

n546 See PDM at 31.

n547 Id. at 31.

The GOO argues that the Department's analysis based on "allocated volumes" in Ontario mischaracterizes the operation of Ontario's Crown stumpage system. The GOO states that it limits tenure holders' harvest based on area, not volume, on a ten-year basis, and that target volumes reported in a mill's annual AWS are non-binding estimates of timber available for harvest. n548 Therefore, the GOO argues, the Department's focus on the fact that tenure holders purchased up to 28.4 percent more than the volume in their AWS is irrelevant, because the annual "allocated volume" in the AWS is not intended to limit the amount of timber that a tenure-holder could harvest annually. Moreover, a tenure-holding sawmill can source (and, thus, will consume) timber from third companies in addition to its tenure allocation. Thus, the GOO alleges that the Department's preliminary analysis is comparing two unrelated data'the non-binding estimated volume of timber available for harvest under a tenure holder's AWS, and the volume of Crown timber consumed by tenure-holding sawmills (which may include timber sourced from third parties). n549

n548 See GOO Case Brief at 28.

n549 Id. at 28-29.

Department's Position: The GOO submitted comments summarized above regarding the validity of private timber prices in Ontario as a benchmark for Ontario Crown stumpage rates and we address those comments here. The GOO also submitted the Hendricks Report, which concludes that the concentration of the Crown timber market and the relative size of the private timber market compared to the Crown market does not result in Crown timber prices influencing private timber prices, and the MNP Ontario Survey, which examines private timber prices in Ontario, and which the GOO argues can serve as a tier-one benchmark. n550 The Hendricks Report analyzed data on private timber transactions in the MNP Ontario Survey and, based on evidence that private stumpage prices are driven by prices for lumber end-products, market participants are well-informed, and private timber owners have multiple buyers, the Hendricks Report concluded that the MNP Ontario Survey data is "consistent with private timber prices being the outcome of a ***competitive*** process." n551 We find these arguments unpersuasive and, for the reasons detailed below, we continue to find that the Crown's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influences the prices for private standing timber such that private prices in Ontario cannot be used as a benchmark.

n550 See Hendricks Report and MNP Ontario Survey.

n551 See Hendricks Report at 39-42.

In choosing a benchmark to calculate the adequacy of remuneration for Crown-origin stumpage in Ontario, the Department first examined whether stumpage prices for timber from private land in Ontario are market-determined. According to information from the GOO, for FY 2015-2016, Crown-origin timber accounted for 96.5 percent of the harvest volume in Ontario, while the harvest volume of non-Crown-origin timber accounted for the remaining 3.5 percent. n552 The CVD Preamble provides that where a government constitutes a majority of the market, and "where it is reasonable to conclude that actual transaction prices are significantly distorted as a result of the government's involvement in the market, we will resort to the next alternative in the hierarchy." n553 Thus, to determine whether there are private transactions for standing timber in Ontario that are suitable as a benchmark, we must first determine whether it is reasonable to conclude that those private transactions are distorted by the government's involvement in the market.

n552 See GOO Primary QNR Response at Exhibit ON-STATS-2. The GOO does not collect harvest volumes from federal and private sources separate in the ordinary course of business, and thus was only able to provide an aggregate harvest volume that combines harvests from these two sources; see also, Market Memorandum at Ontario Attachment, Table ON-STATS-2.

n553 See CVD Preamble, [*63 FR at 65377*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

According to the GOO, the stumpage charge for Crown-origin timber is composed of four components. The first is a minimum charge, which is administratively set by the GOO and is intended to provide a secure level of revenue for the GOO, regardless of market conditions. n554

n554 See GOO Verification Report at 9.

We learned at verification that the minimum charge was administratively set at C$2.84/m3 in FY 1997-1998, and has been inflated annually by Canada's IPI. n555 The second component, the RV charge, is calculated monthly and is assessed on the difference between the price of a basket of end-products (e.g., various softwood lumber products) and a measure of the cost of producing and delivering those end-products. n556 Lumber prices throughout the POI were low enough such that the RV charge was not levied on Crown-origin timber during the POI. n557 The other two stumpage components, the forest renewal charge and the forestry futures charge, are levied every year to cover the cost of renewing harvested areas and protecting Crown timber land. n558 The forest renewal charge is set based on estimated forest renewal costs and the projected harvest volume for each species, while the forestry futures charge is uniform across all FMUs and tree species groups. n559

n555 Id. at 9-10.

n556 Id. at 12.

n557 Id. at 13.

n558 Id. at 10; see also GOO Primary QNR Response at 79-84.

n559 See GOO Primary QNR Response at 79-80.

Thus, of the three stumpage components that the GOO charged during the POI, only the forest renewal charge took into account market conditions (e.g., estimated forest renewal costs). The minimum charge, which was administratively set 20 years ago, does not take into account market conditions other than inflation, and the forestry futures charge is uniform across all species groups and regions. n560

n560 See GOO Verification Report at 10.

We next examined the supply of standing timber in Ontario from the Crown and private sources. The GOO does not allocate harvest volumes to tenure holders; rather, it allocates harvest areas (the AHA) to a tenure holder over the ten-year term of an FMP. n561 The volume of standing timber that a tenure holder can harvest in a given year is flexible. Each year a tenure holder develops an AWS in which it sets a target for the area to be harvested, but that target is not binding; the only effective harvest limit is the AHA over a ten-year period. n562 This arrangement ensures that the Crown supply of timber is flexible on a yearly basis, such that in years when the demand for lumber products is high, tenure holders can consume more than their annual target of public timber at an administered price before turning to the private market for additional supply. In addition, the GOO does not regulate the transfer or sale of timber between sawmills or to third parties. The ability to trade Crown timber between mills makes the Crown timber market more flexible and allows tenure holders to harvest more extensively from Crown land before turning to the private market. n563 We find that the ability to harvest at levels greater than the short-term targets set in the AWSs and the option to transfer timber between mills expands the market for Crown timber, which has the effect of depressing demand'and, therefore, prices'in the private market.

n561 See GOO Primary QNR Response at 89-90.

n562 See GOO Verification Report at 4.

n563 Id. at 14.

The GOO cites to the Hendricks Report, which concludes that the Ontario timber market is characterized by price takers (and, thus, results in market-based prices for private timber).

However, the Hendricks Report ignores the fact that there is one dominant price setter, the GOO, in the Ontario timber market. The Crown supplied 96.5 percent of the market during the POI, and, as noted above, set administered prices that do not fully consider market conditions. The Hendricks Report focuses on the connection between the Crown and the private timber markets, and concludes that conditions in the Crown market do not influence conditions in the private market. We examined data from the GOO's eFAR system, which indicates that the universe of firms consuming timber from private sources in Ontario is heavily concentrated and is dominated by tenure holders. n564 The GOO's data reveals that tenure holders consume a significant volume of private timber in Ontario. n565 The fact that a majority of private origin standing timber is sold to a small number of customers, who are dominant consumers of both private and Crown timber, demonstrates that the private market in Ontario is not as independent and free of influence from the Crown timber market as the Hendricks Report suggests.

n564 Id. at Exhibit VE-9.1.

n565 Id. at Exhibit VE-9.1; see also Market Memorandum, Ontario.

Furthermore, while the Hendricks Report assumed that stumpage prices in southern Ontario would be higher than prices in northern Ontario because the distance between the timber and sawmills is greater in the north than in the south (thereby depressing northern prices), the MNP Ontario Survey, on which the Hendricks Report relies, found that SPF stumpage prices in 2015-2016 were in fact lower in the south than in the north. n566 As a result, the theory of a ***competitive*** market for private origin timber in Ontario in the Hendricks Report does not fit the data underlying the MNP Ontario Survey upon which that report purportedly relied.

n566 See Hendricks Report atl3 and 38; see also MNP Ontario Survey at 7.

Finally, the MNP Ontario Survey is based on a small number of survey respondents. The SPF private timber price for FY 2014-2015 provided in the MNP Ontario Survey is based on responses from eight SPF sawmills, and the FY 2015-2016 SPF price is based on responses from 15 SPF sawmills. n567 The MNP Ontario Survey acknowledged that the survey had a "relatively low number of survey responses" in comparison to previous surveys of the private timber market, which "suggests an overall reduction in the number of loggers purchasing private timber compared to the situation ten or more years ago." n568 The small number of respondents reporting private timber purchases calls into question the representativeness of those responses, and further suggests that there is diminished demand for private timber in Ontario.

n567 See MNP Ontario Survey at 6.

n568 Id. at 6.

Thus, the Department continues to determine that it is reasonable to conclude that private timber prices in Ontario are distorted as a result of the government's involvement in the market and, therefore, there are no market-based tier-one stumpage prices available within Ontario that can be used as a benchmark.

Comment 32: Whether the Ontario Log Benchmark Relied on by the Department in Lumber IV Would Demonstrate that Ontario Crown Timber is Not Subsidized

The GOO argues that if the Department refuses to use Ontario private stumpage prices as a benchmark, the Department should instead rely on log prices in Ontario. The GOO notes that in the first remand proceeding from the NAFTA Panel in Lumber IV, the Department used a residual value methodology to calculate a log price benchmark using log price data in a KPMG study. n569 The GOO argues that if the Department were to apply the same methodology in this investigation, it would find that Ontario's internal log market is not distorted and that the GOO did not subsidize stumpage during the POI. n570

n569 See GOO Case Brief at 36.

n570 Id. at 36-37.

The petitioner argues that the legal standard is not to dismiss private prices only when there is evidence that they are "affirmatively distorted," but rather it is to not use private prices as a benchmark where it is "reasonable to conclude" that prices are distorted by the government's involvement in the market. n571 The petitioner argues that the facts cited by the Department in the Preliminary Determination fully support that it is "reasonable to conclude" that private stumpage prices in Ontario are distorted by the GOO's administered stumpage prices. Further, the petitioner argues that log prices are distorted for the same reasons that private timber prices in Ontario are distorted. n572 In addition, the petitioner argues that private log prices would be a tier-three benchmark, which is not necessary for the Department to consider when there is a suitable in-country tier-one benchmark based on the Nova Scotia survey data that the Department relied on in the Preliminary Determination. n573

n571 See Petitioner Rebuttal Brief at 27 (citing to the CVD Preamble, [*63 FR at 65377).*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n572 Id. at 26 (citing to GOO Case Brief at 35-38).

n573 Id. at 26-27 (citing to the PDM at 43-46).

Department's Position: As discussed in Comment 31,we continue to find that the stumpage market in Ontario is distorted and we continue to find that the private stumpage prices in the Nova Scotia survey data are the appropriate prices to use as a tier-one benchmark. Here, the good for which we are evaluating the adequacy of remuneration under 19 CFR 351.511 is stumpage; accordingly, tier-one benchmarks under subsection 351.511(a)(2)(i) of that ***regulation*** include market-determined stumpage prices in Canada. The log prices that the GOO proposes as a benchmark are prices for logs, rather than prices for stumpage'and, as such, log prices are not "market-determined price[s] for the good," stumpage. Thus, said log prices are not tier-one benchmarks. Having determined that stumpage prices in the NS Survey may serve as a tier-one benchmark, it is not necessary for the Department to examine the suitability of other data points, such as private logs prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy enumerated inl9 CFR 351.511(a)(2).

Comment 33: Whether Stumpage Charges Distort Ontario's Domestic Log Market and Whether a Log Price Benchmark Shows No Subsidy

The GOO has placed on the record of this investigation a survey conducted by KPMG of log prices in Ontario from private and Crown lands. n574 The GOO argues that these prices are based on arm's-length transactions and are not affected by any alleged subsidies of Ontario Crown stumpage. Further, the GOO argues that the petitioner has not provided any evidence suggesting that these Ontario log prices are distorted. n575

n574 See GOO Case Brief at 37 (citing to the GOO Primary QNR Response at Exhibit ON-STATS-3, "Report on 2015-16 Ontario Softwood Timber Costs and Resources" (KPMG Report) at Schedule 3).

n575 Id. at 37.

If the Department uses a log price benchmark, the GOO argues that it should use the log prices in the KPMG Report. The GOO notes that the Department relied on a similar benchmark of Ontario log prices in the First Remand Determination of Lumber IV. n576

n576 Id. at 37-38.

The petitioner rebuts the GOO by arguing that log prices are distorted for the same reasons that private timber prices in Ontario are distorted. n577 See Comment 32. The petitioner further argues that private log prices would be a tier-three benchmark, which is not necessary for the Department to consider when there is a suitable in-country, tier-one benchmark based on the NS Survey data that the Department relied on in the Preliminary Determination. n578

n577 See Petitioner Rebuttal Brief at 26 (citing to GOO Case Brief at 35-38).

n578 Id. at 26-27 (citing to the PDM at 43-46).

Department's Position: Pursuant to our ***regulation***, we prefer to apply, as a tier-one benchmark, "a market-determined price for the good or service resulting from actual transactions in the country in question." n579 Accordingly, our ***regulation*** is clear that we prefer to use a benchmark price for the precise good that we are evaluating: here, the provision of stumpage. The log price that the GOO proposes as a benchmark is not a stumpage price, and, thus, is not "a market-determined price for the good or service" we are investigating. As such, it is not a tier-one benchmark. As discussed in Comment 39, we continue to find that the private stumpage prices in the NS Survey are appropriate prices to use as a tier-one benchmark to measure the provision of stumpage for LTAR in the province. Having determined that stumpage prices in the NS Survey may serve as a tier-one benchmark it is not necessary for the Department to examine the suitability of other proposed benchmarks, such as private logs prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy set forth in 19 CFR 351.511(a)(2).

n579 See 19 CFR 351.511(a)(2)(i).

Comment 34: Whether to Estimate Ontario's Crown Timber Prices with Quebec's Transposition Equation

The GOO argues that, although Ontario does not conduct timber auctions, it is possible to assess what prices such auctions would yield by applying Quebec's transposition equation to the same variables modeling Ontario timber characteristics. n580 The GOO states the derived timber value is C$12.78/m3 and claims the price is a valid benchmark, unlike the Nova Scotia prices. Accordingly, if the Department does not use the MNP Ontario Survey prices as a benchmark for the respondents' purchases of stumpage in Ontario, the Department should use the derived timber value of C$12.78/m3 as a tier-one benchmark for purchases of stumpage in the province.

n580 See GOO Case Brief at 56-57.

Department's Position: Pursuant to our ***regulation***, we prefer to apply, as a tier-one benchmark, "a market-determined price for the good or service resulting from actual transactions in the country in question." n581 The ***regulation*** goes on to state that "[s]uch a price could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from ***competitively*** run government auctions." n582 Accordingly, our ***regulation*** is clear that we prefer to use as a benchmark the prices from actual transactions, including actual prices from ***competitively*** run government auctions. The derived timber value that the GOO proposes as a benchmark is just that'derived'and not the "result)] from actual transactions" in Ontario. As such, it is not a tier-one benchmark. As fully discussed in Comment 39, we continue to find that stumpage prices for private-origin standing timber in Nova Scotia are appropriate prices to serve as a tier-one benchmark. Because we have a useable tier-one benchmark, it is not necessary for the Department to examine the suitability of other potential benchmarks, such as derived timber prices in Ontario, that fall under the second and third tier of the LTAR benchmark hierarchy set forth inl9 CFR 351.511(a)(2).

n581 See 19 CFR 351.511(a)(2)(i).

n582 Id.

Comment 35: Whether the Quebec Stumpage Market Is Distorted

The GOQ argues that the Department's preliminary finding of market distortion rests on flawed premises that are not supported by the verified record. n583 The GOQ asserts that the Department (1) provided no analysis demonstrating that market prices established by Quebec's public timber auctions are distorted, (2) cannot rely on government predominance in the supply of a good as per se establishing distortion of the market for that good, and (3) ignored the findings of the Marshall Report, which is the only study on the record that subjected the auction data to economic tests and which concluded that the auction prices are valid market prices free of government distortions. The GOQ adds that the Department's preliminary analysis did not demonstrate that there is any collusion among auction bidders and, in fact, the Department acknowledged that the auction procedures are designed to prevent collusive behavior. Therefore, the GOQ asserts, as concluded in the Marshall Report, the Department must find that Quebec's auctions are undistorted and yield market-based prices, which are viable tier-one benchmarks for assessing TSG prices. The GOC submits that the Kalt Report, which it placed on the record, rebuts the assertion of market distortion and, thus, there is no reason to go outside Quebec for a benchmark. n584

n583 See GOQ Case Brief at 6-40; see also PDM at 39-42.

n584 See GOC Case Brief at 17-34.

In rebuttal, the petitioner, referencing the Stoner & Mercurio Report, notes that where a substantial amount of a market is supplied by a government entity at an administered price, and where firms have the opportunity to purchase additional supply at that administered price, prices in any non-administered sector will be depressed by the administered price and, therefore, cannot be used to measure whether the administered price confers a subsidy. n585 The petitioner adds that this analysis applies not only when the government supplies all of the timber, "but also when the non-***competitive*** sector does not exhaust all supply." n586 In this case, the non-***competitive*** price would not dictate the private price but can influence the observed market price, if the noncompetitive sector is relatively large and firms can choose between them. The petitioner contends that the Department found this situation to exist in Quebec where a large share (i.e., 51 percent) of the timber is provided non-***competitively*** under TSGs at government-determined prices and there is overlap in the lumber producers able to access Crown timber via TSGs and auctions.

n585 See Petitioner Rebuttal Brief at 27-30.

n586 Id. at 29.

Department's Position: We disagree with the GOQ's arguments that the timber market in the province is not distorted. However, before addressing in detail the arguments made by the GOQ, it is important to review the regulatory language with respect tol9 CFR 351.511 ' the provision of a good or service for less than adequate remuneration. Under the ***regulation***, we prefer to measure the adequacy of remuneration using in-country prices as a benchmark, referred to a tier-one benchmark. This tier-one benchmark could include prices stemming from actual transactions between private parties, actual imports, or, in certain circumstances, actual sales from ***competitively*** run government auctions. However, where it is reasonable to conclude that prices in that market are significantly distorted as a result of the government's involvement in that market, the Department will not use the prices within that market. n587 Therefore, when information on the record indicates that the government is involved in the market, before determining whether it is appropriate to use prices from within that market, the Department must determine whether that market is distorted due to the presence of the government. n588 Once it is determined that the market is distorted by the presence of the government, prices between private parties, import prices, or government auction prices are no longer viable benchmark prices. As discussed below, information on this record shows that the Quebec stumpage market is distorted because the majority of the market is controlled by the government, which provides long-term timber supply rights at administratively set prices to only firms that process the logs within the province, and because other circumstances (including the provincial mandate that logs harvested in the province be processed in the province) serve to decrease firms' incentive to pay above that administratively-set price for private timber or to bid above that administratively-set price at auction. Therefore, prices within Quebec cannot serve as a benchmark under 19 CFR 351.511(a)(2)(i).

n587 See, e.g., CVD Preamble, [*63 FR at 65377.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n588 The CVD Preamble at 65377 refers to situations where the government provider constitutes a majority or, in certain circumstances, a substantial portion of the market.

As stated in the Preliminary Determination, we find that, with regard to Quebec's auction system, the GOQ makes information on proposed sales and winning auction bids publicly available, allows sawmills and non-sawmills (in and out of Quebec) to participate in the auctions, and has implemented auction procedures that are designed to prevent collusive behavior (e.g., selecting winners based on the first bid rather than permitting bids to be conducted in rounds, and not disclosing information on the identities and bids of unsuccessful bidders). n589 However, the totality of the evidence on the record leads us to conclude that the auction prices for Crown timber track the prices charged for Crown timber allocated to TSG-holding sawmills and, thus, the auction prices for Crown timber are not viable tier-one benchmarks.

n589 See PDM at 40.

In the Preliminary Determination, we outlined five observations which led us to conclude that the Quebec stumpage system is distorted and the auction prices cannot serve as a benchmark: (1) overall consumption of non-auction Crown timber is large relative to other sources; (2) the GOQ, through the BMMB, is not meeting its consumption goal for timber sold via auction; (3) a significant volume of timber offered at auction did not sell during the POI; (4) a small number of TSG-holding corporations dominate the consumption of Crown timber (both directly allocated via TSGs and sold via auction); and (5) TSG-holding corporations can shift their allocations of Crown timber, thereby reducing their need to acquire timber in the auction or from non-Crown sources. n590 Some of those observations were clarified at verification. In particular, with regard to our second observation above, we verified that BMMB's mandate was to offer for auction 25 percent of the available attributed volume for each administrative region, n591 and not, as preliminarily stated, that sawmills must consume 25 percent of their total mill needs with Crown timber sourced from the auctions. n592 Notwithstanding the clarifications obtained at verification, the observations made at the Preliminary Determination remain significant and informative. When taken in totality, those observations continue to illustrate that the auction prices are not market-based and, thus, cannot serve as a tier-one benchmark. We address each observation below.

n590 Id. at 39-42.

n591 See GOQ Verification Report at 18.

n592 See PDM at 41.

The GOQ is the largest provider of stumpage with 73.88 percent of the stumpage harvest for FY 2015-2016 sourced from Crown land. n593 Of that amount, 51.75 percent was sourced via administered TSGs and 22.13 percent from the auctions. n594 The remaining volumes were sourced from the private forest (15.07 percent) and log imports from the United States and other Canadian Provinces (11.05 percent). n595

n593 See Quebec Final Market Memorandum at Table 7.1. The Crown-origin standing timber's share of the harvest volume increases to 83.06 percent when examining standing timber that originated in the province. Id. at Table 7.2.

n594 Id. at Table 7.1.

n595 Id.

Given that, under a TSG, a sawmill can source up to75 percent of its supply need at a government-set price, n596 there is strong motivation for a sawmill to treat its TSG-guaranteed volume as its primary source of supply and its auction volume as an additional or residual supply source. Evidence on the record shows that approximately 94 percent of TSG-holders purchased all of their allocated Crown timber in FY 2015-2016. n597 These data indicate that sawmills consider their TSGs to be their primary source of wood and not a source for their residual needs, as claimed by the GOQ and stipulated under Article 91of the SFDA. n598 Further, in contrast to the roughly 75 percent of a TSG-holding mill's supply need that it may purchase through TSGs, the same mills source comparatively little Crown-origin timber through BMMB-run auctions. Record evidence for processed wood during FY 2015-2016 indicates that, in aggregate, TSG-holding sawmills sourced just 20.6 percent of their Crown supply from the auction. n599

n596 See GOQ Verification Report at 9 and 12-13.

n597 See GOQ Primary QNR Response at Exhibit QC-STUMP-9 (Table 18). For a given year, the amount of timber purchased by a sawmill may not be equal to the amount harvested by the sawmill under a TSG because a TSG-holder can choose to not harvest all of its purchased timber. See GOQ Verification Report at 16.

n598 See GOQ Primary QNR Response at 44-45 and Exhibits QC-Stump 19 and 20, which contain the SFDA for FYs 2014-2015 and. 2015-2016.

n599 See Quebec Final Market Memorandum at Table 20.3.

The GOQ reported TSG-allocated Crown and standing timber consumption volumes on a sawmill-specific basis. n600 Data in the GOQ's response allowed us to aggregate the sawmill data based on the sawmills' corporate addresses. n601 We find that aggregating the sawmill data by corporation is most useful to our analysis, because sawmills act as members of corporate families rather than as stand-alone entities. n602 An analysis of the aggregated data indicates that the consumption of TSG-allocated Crown timber is concentrated among a small number of corporations. n603 We thus evaluated whether the auction system operates independently of the Crown timber allocation system by examining the extent to which the TSG-holding sawmills are not also active in the auction system. The data indicate that the same corporations dominate both the consumption of TSG-allocated Crown timber and the purchase of auctioned Crown timber. n604 Sorting the GOQ's reported log processing data in descending order by volume reveals that, for FY 2015-2016, the 10 largest TSG-holding corporations accounted for 74.87 percent of logs acquired via supply guarantees. n605

n600 See GOQ Primary QNR Response at Exhibit QC-STUMP-9 (Table 18).

n601 See Quebec Final Market Memorandum at Table 20.1.

n602 We determine our finding in this regard is warranted given that the GOQ tracks the corporate addresses of TSG holding sawmills. Id. at Table 20. Also, the auction data provided by the GOQ identity the winning bid by corporation, thereby leading us to conclude that firms participate in the auctions at the corporate level and not at the sawmill level. Id. at Table 12.

n603 Id. at Table 20.2.

n604 Id.

n605 Id.

The GOQ argues that, for the 10 largest sawmills collectively, TSG volumes satisfied less than 75 percent of their total mill need. n606 However, the GOQ's analysis of "total mill need," aha, operating permit, is an estimated or anticipated amount of timber that a sawmill may be able to process in a given year, and not an amount that reflects the actual activity of sawmills in a given year. n607 We verified that MFFP determines operating permit size by relying on information not only from the sawmill, but also takes into consideration production data of other mills in the area. n608 Operating permits are also static, with the MFFP revisiting permits every five years. n609 We additionally verified that TSG holders are not required to purchase all of their annual TSG allocation volumes, and are not required to harvest all the Crown-origin timber that they purchase in a given year. n610 As such, we find that the most accurate manner to conduct our analysis is based on actual processing data, which reflect the market realities of the TSG-holding corporations. Further, as noted above, we find that our analysis must be done on a corporate, and not a sawmill, basis given that sawmills act as members of corporate families rather than as stand-alone entities.

n606 See GOQ Case Brief at 15.

n607 Id:, see also GOQ Primary QNR Response at Exhibits QC-Stump 2 and 9.

n608 See GOQ Verification Report at 6.

n609 Id.

n610 Id. at 7.

Information on the record also show that the 10 largest TSG-holding corporations accounted for 62.43 percent of the softwood sawlog auction volume acquired during 2015. n611 The data thus indicate that the largest TSG-holding corporations are not only active in the auction system, but are the predominant buyers of auctioned Crown timber and, therefore, are influencing the auction prices.

n611 See Quebec Final Market Memorandum at Table 20.2.

We find that there is little incentive for the TSG-holding corporations to bid for Crown timber above the TSG administered price when those corporations do participate in an auction. As noted above, under a TSG, a sawmill can source up to 75 percent of its supply need at a government-set price. We also verified that the first 100,000 m3 of a mill's residual need is exempt from the MFFP's 25 percent auction ratio. n612 As a result, certain mills are sourcing more than 75 percent of their supply needs via TSGs. n613 And, as discussed below, a sawmill can obtain additional wood at the government-set price via transfers from other sawmills and the sale of unharvested timber by the BMMB. This evidence indicates that, given the large supply of Crown timber in the stumpage market, Crown timber is the price maker. Similarly, we find that there is little reason for non-sawmills (i.e., independent bidders) to bid for timber in the auctions above the TSG administered price. Because the timber purchased at the auctions must be milled in Quebec, n614 we conclude that the non-sawmills must be selling the timber they purchase at the auctions to the TSG-holding sawmills. Within this market, the sale of timber by the non-sawmills is ***competing*** with the timber available to sawmills at the guaranteed government price via the TSGs. As such, the non-sawmills have little motivation to bid for timber at a price above which they can sell the wood to the sawmills. When setting their bid prices, the non-sawmills can reference the TSG prices, which are publicly available. n615 Likewise, the non-sawmills can research the published winning auction prices of TSG-holding corporations616 to gauge the price point at which the sawmills will purchase wood. These circumstances indicate that the TSG-holding corporations wield considerable market power in the auction system and, consequently, the reference market (here, the auction) does not operate independently of the administered market.

n612 See GOQ Verification Report at 9.

n613 Id.

n614 Id. at 18.

n615 Id. at 12-13.

n616 Id. at Exhibit QC-26, page 3; see also GOQ Primary QNR Response at 3.

Additionally, although the verified unsold volume of timber offered at auction was approximately 15 percent, n617 and not 32.3 percent, as we preliminarily stated, n618 we find that 15 percent is a significant amount of unsold timber. The unsold timber is an additional sign that TSG-holding corporations and non-sawmills may not be making aggressive bids above TSG prices. Moreover, TSG-holding corporations can bypass the auctions and shift allocations of Crown timber amongst themselves. Pursuant to sections 92 and 93 of the SFDA, TSG-holders in Quebec are permitted to shift allocated Crown timber volumes among affiliated sawmills and between corporations. n619

n617 See GOQ Verification Report at 20-21 and Exhibit QC-30.

n618 See PDM at 41.

n619 See GOQ Verification Report atl5-16.

Based on the record at the Preliminary Determination, we found that, during the POI, under sections 92 and 93 of the SFDA, sawmills transferred approximately 640,000 m3 of TSG-allocated Crown timber, which amounted to 15.3 percent of the volume of softwood sawlogs sold via auctions. n620 Based on data clarifications obtained at verification, these transfer volumes were reduced. However, notwithstanding these verification revisions, the fact remains that section 92 of the SFDA permits TSG-holders to annually transfer up to 10 percent of the total volume harvested under their TSGs without government approval. n621 Given that just 22 percent of the stumpage harvested for FY 2015-2016 came from auctioned Crown timber, the ability of a TSG-holder to obtain an additional 10 percent of its TSG volume from another TSG-holder indicates that the auctions may not be a ***competitive*** source for wood. The ability of corporations to shift allocations among sawmills provides TSG-holding corporations flexibility in terms of their supply sources, and reduces their need to source timber from non-Crown sources.

n620 See PDM at 41.

n621 See GOQ Verification Report at 15.

Further, at the end of the year, any unharvested TSG volumes are returned to MFFP, which then decides whether to let the timber stand, sell it directly to a sawmill, or give the timber to the auctions. n622 We verified that, during FY 2015-2016, 19.5 percent of unharvested timber was sold by MFFP to sawmills via one-year contracts with a TSG administered price. n623 We further verified that the remaining timber was left standing. n624 The ability of sawmills to purchase unharvested volumes at the government-set price further diminishes their need to source supply from the auctions or other ***competitive*** sources.

n622 Id. at 11.

n623 Id.

n624 Id.

More importantly with respect to the Quebec auction, under 19 CFR 351.511(a)(2)(i), the Department will only use actual sales prices from ***competitively*** run government auctions as a tier-one benchmark. The Department verified that timber purchased at the auctions must be milled within Quebec. n625 This is a substantial restriction that demonstrates that the Quebec auction is not an open, ***competitively*** run auction. This restriction effectively excludes potential bidders that would mill the timber outside of Quebec, and would exclude bidders that would want to sell the timber (either harvested, or the harvested logs) for milling outside of the province. Furthermore, limiting bidders suppresses auction bids, because bidders understand that there are fewer parties against which their bid will ***compete***. Thus, instead of implementing an auction based solely on an open, market-based ***competitive*** process, the GOQ created an auction based upon a government-implemented policy to ensure that the timber is milled within the province. Therefore, even if the Quebec stumpage market was not distorted, the Quebec auction prices would not meet the regulatory criteria as an appropriate benchmark as set forth under 19 CFR351.511(a)(2)(i).

n625 Id. at 18.

The GOQ, the GOC, and the petitioner have each placed purchased commissioned reports on the record with respect to the issue of government distortion. We first note that none of the interested parties have placed reports or studies that were conducted independently from the current lumber investigation or the previous lumber investigation, nor have they placed on the record reports or studies on the provincial stumpage markets that have been published in peer-reviewed journals. Although we consider all evidence on the record of a proceeding in reaching our determination, in determining the weight to be accorded to a particular piece of evidence, we consider whether the evidence in question was prepared in the ordinary course of business, or for the express purpose of submission in an adjudicatory administrative proceeding. n626 Because these reports were prepared for the express purpose of submission in this investigation or the previous lumber investigation, we find that the reports are at "risk of litigation-inspired fabrication or exaggeration," n627 which diminishes their weight.

n626 See [*Sandt Tech., 264 F.3d at 1350-51;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XR-10J0-003B-935Y-00000-00&context=) see also [*Transweb, 812 F.3d at 1301-02.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5J29-4F31-F04B-M0B8-00000-00&context=)

n627 See [*Sandt Tech., 264 F.3d at 1350-51.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43XR-10J0-003B-935Y-00000-00&context=)

The reports put on the record by the respondents and the petitioner each reached separate conclusions. However, the determinations made in this investigation must be based upon the language and requirements of the statute and the CVD ***regulations***. None of the cited studies that have been placed on the record cite to the statute or to the CVD ***regulations***. The selection of a benchmark by the Department is based solely on the language set forth in both the statute and the CVD ***regulations***. Under the CVD ***regulations***, while we recognize that some government involvement in a market may have some impact on the price of the good or service in that market, such distortion will normally be minimal unless the government constitutes a majority or, in certain circumstances, a substantial portion of the market. n628 Neither the Kalt Report nor the Stoner & Mercurio Report provide any analysis of actual prices within the Quebec stumpage market, nor do these reports provide any analysis of the actual government presence and involvement within the Quebec market as required as part of any distortion analysis under 19 CFR351.511(a)(2)(i).

n628 See CVD Preamble, [*63 FR at 65377.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

The Marshall Report does not reference the language and requirements of the statute and the CVD ***regulations***, but rather provides an analysis of auction prices in Quebec. However, under 19 CFR 351.511(a)(2)(i), government auction prices can only be used as a benchmark if the auction is based solely on an open, ***competitively*** run process. As noted above, the GOQ auction does not meet the regulatory requirements of an open, ***competitively*** run auction because the GOQ requires that all timber sold at auction must be milled within Quebec. Therefore, the Marshall Report is also not relevant with respect to whether the Quebec auction can serve as a benchmark. Furthermore, the Marshall Report did not provide any analysis of Quebec auction prices to stumpage prices from markets that have previously been found not to be distorted such as private prices from the Atlantic Provinces in Canada and stumpage prices in the United States to support a statement that the auction prices are not distorted by the government presence within the Quebec market. Nor did the Marshall Report analyze all of the bid prices submitted in the auction, both losing and winning bids, with a comparison between TSG-holders and non-TSG-holders. The Marshall Report at paragraph 69 and footnote 72 states that the auctions are open to bidders from all regions and does not exclude or otherwise discriminate against potential exporters. However, as discussed above, the Department verified that harvested timber from the auction must be processed in Quebec; n629 this restriction necessarily limits bidders.

n629 See GOQ Verification Report at 18.

We disagree with the GOQ that the Policy Bulletin of 2003 n630 introduced the Department's analytical framework for provincial timber auctions. The Policy Bulletin was a preliminary document, through which comments were solicited from the public pertaining to proposed policies for Canadian provinces to move to market-based systems of timber sales. Those proposed policies, however, were never adopted by the Department. The Department's analysis of a provincial stumpage system is not bound by proposed ideas that were never finalized, and which neither incorporated nor addressed the solicited comments. Rather, consistent with the Department's practice we have thoroughly evaluated the record evidence to reach a finding on the market conditions existing within a provincial stumpage system pursuant to the framework set forth in 19 CFR 351.511(a)(2)(i).

n630 See Policy Bulletin.

Although Quebec's auction system displays several ***competitive*** features, the observations outlined above lead us to conclude that the prices paid for Crown timber allocated directly to TSG-holding corporations affects the prices paid in the auction system, such that the auction does not yield prices free of distortion. Consequently, we determine that Quebec's auction prices are not market-based, and, therefore, are not suitable as a tier-one benchmark. We thus are treating the timber volumes sourced from the auctions as a countervailable source of Crown timber and have included that timber in our benefit calculation. Further, consistent with the Preliminary Determination, we continue to apply stumpage prices for private-origin standing timber in Nova Scotia as the tier-one benchmark to measure the adequacy of remuneration of timber sourced from the Crown.

Comment 36: Whether the Department Made a Clerical Error in Its Calculation of the Quebec Stumpage Benefit That It Should Correct in Its Final Determination

Resolute asserts that a formula the Department used in the Preliminary Determination to calculate the alleged subsidization of Crown stumpage to Resolute's Senneterre mill contains an error. The calculations spreadsheet prepared by the Department contains a formula that sums the value of all species of softwood timber consumed by the Senneterre mill; however, the formula omits Column N, which contains the value of Spruce. n631 The Department should correct this error in the final determination by revising the formula to include the value for Spruce in Column N, which is consistent with the formula used in the calculation spreadsheets for Resolute's other Quebec sawmills. n632

n631 See Resolute Case Brief at 33.

n632 Id. at 34.

Department's Position: The Department agrees that the formula identified by Resolute failed to account for spruce values and, thus, constitutes an error. For the final determination, we have revised the formula to include the value of Spruce in Column N.

Comment 37: Whether Resolute Pays ***Competitive*** Prices for Its Purchases of Non-TSG or Non-Tenured Timber

Because there is a cap on how much timber can be sourced under TSGs in Quebec, Resolute states that it sources additional supply through a combination of auctions, private forest, and purchase of logs, and alleges it pays a premium to do so. n633 Resolute argues that this shows that it has an incentive to win auctions (and, thus, to not depress its bids). Likewise, in Ontario, Resolute buys additional wood supply from private forest owners and Forest Resource License holders, again, it contends, at a premium price. Resolute also argues that there is no evidence that private forest prices are depressed and, in fact, asserts that the record indicates a ***competitive*** private forest market in Ontario and Quebec.

n633 Id. at 17-19.

Department's Position: For the reasons detailed in Comment 31,we continue to find that Ontario's administered stumpage rates and the Crown's overwhelming share of the market, as well as the flexible supply of Crown timber that is available to tenure holders, influence the prices for private standing timber such that private prices in Ontario cannot be used as a tier-one benchmark.

With regard to Quebec, the GOQ did not provide pricing information for timber sales from the private forest for use as a possible benchmark in this investigation. We thus lack the necessary pricing data and cannot address whether private sales could serve as a possible benchmark for sales of Crown timber in Quebec. Further, even if prices for private-origin standing timber in Quebec were available, our finding that the stumpage market in Quebec is distorted would disqualify such private prices from use as a tier-one benchmark.

We disagree with Resolute's claims that limited TSG allocated volumes force it to ***competitively*** bid for auction and private-origin timber and that the existence of these allegedly-***competitive*** markets belies the Department's finding that Quebec's stumpage market is distorted. As discussed in Comment 35, evidence on the record leads us to conclude that the Quebec stumpage market is distorted because the auction prices for Crown timber track the prices charged for Crown timber allocated to TSG-holding sawmills. Importantly, in reaching our distortion finding, we are not determining that the prices of auctioned, or private-origin, timber are the same as the prices for TSG-sourced standing timber. Rather, in making the distortion finding, we conclude that the prices for standing timber in the auction and private forest track the prices charged for TSG-sourced timber. Although firms, such as Resolute, may ultimately purchase auction or private timber at prices that are higher than those charged for TSG-sourced timber, the evidence on the record indicates that the auctioned or private timber prices are not independent of the prices charged in the public forest.

Further, and contrary to Resolute's claims, representatives of Quebec's private forest landowners themselves state that private stumpage prices are suppressed. Yvon Parker, President of the Gatineau Wood Producers' Office, a private forest landowners syndicate, stated in the March 2016 edition of Forestry Outlook that "It should be noted that certain industrialists [mills] benefit from more [public]wood than they actually need, which entails sudden stops in wood deliveries, as observed on multiple occasions. In such situations, it is the private forest that foots the bill by being offered barely viable prices and facing the threat of discontinuing orders if they refuse to oblige." n634 Thus, not only do mills have a disincentive to bid ***competitively*** at auctions in Quebec'as demonstrated by Parker's statement that mills have "more [public] wood than they actually need"'but, also, private prices are depressed by the surplus of wood available. Both of these facts undercut Resolute's argument that it has an incentive to not depress its bids, and that it pays a "premium" to purchase through non-TSG or non-tenure sources. Consequently, on the basis of the record evidence, we find no merit to Resolute's arguments.

n634 See Petition at Exhibit 212.

Comment 38: Whether the Department Should Account for the Premiums Resolute Pays Over Auction Prices in Quebec

In the Preliminary Determination, the Department accounted only for the cash portion of Resolute's payment to the GOQ for stumpage harvested from Crown land in Quebec; however, the Department failed to account for the premium above the auction price that Resolute must pay when another bidder wins an auction and sells logs to Resolute. n635 Auction winners may be loggers and contractors, not sawmills, who harvest and sell to sawmill owners such as Resolute.

n635 See Resolute Case Brief at 24-25.

Department's Position: We understand Resolute to be proposing an adjustment to its purchases of Crown-origin stumpage to account for the "premium" above the original auction price that Resolute paid to third parties for either the right to harvest, or logs harvested from, Crown land secured by those third parties via Crown auctions. However, we need not consider whether Resolute paid a "premium" under those circumstances, or whether, if it did pay a "premium," an adjustment would be appropriate, because in the stumpage transactions Resolute reported to the Department, the company did not identify which Crown timber purchases were made via third parties, nor has it quantified the alleged "premiums" paid above the auction price. n636 As such, we are unable to make the requested adjustment.

n636 See Resolute Initial QNR Response at Exhibit RESB-16; see also Resolute Supp QNR 6 at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6.

Comment 39: Whether NS Private Stumpage Prices Can Serve as a Tier-One Benchmark

The Canadian Parties argue that private-origin standing timber in Nova Scotia is not available in other Canadian provinces. Thus, the Department cannot use private-origin standing timber prices in Nova Scotia as a benchmark for other Canadian provinces. n637 For example, the GOA argues:

"[t]he jurisdictional constraint… exists because the Department's

"preference for Tier 1 is based on the expectation that such

[benchmark] prices would generally reflect most closely the commercial

environment of the purchaser under investigation, and "[b]ecause the

Department must determine whether any price differential between the

goods is… not the result of differences in prevailing market

conditions between the jurisdictions, it is logical that the preferred

benchmark be in the same market as that where the government provision

of the goods occurred. n638

n637 See GOC Etal Common Issues Case Brief, at 34-37.

n638 See GOA Case Brief at 26-27, citing to SC Paper from Canada Preliminary Determination IDM at 39.

The petitioner argues that the Department properly used private-origin standing timber prices in Nova Scotia as the benchmark for New Brunswick, Quebec, Ontario, and Alberta stumpage because the Nova Scotian prices constitute tier-one benchmark prices that are available in the country of provision, Canada. The petitioner further argues that the statute does not require the Department to consider availability at the provincial level when determining whether LTAR benchmarks are available in the country of provision. n639

n639 See Petitioner Rebuttal Brief at 43-44.

Department's Position: Consistent with our findings in Lumber IV, n640 we find that stumpage prices for private-origin standing timber in Nova Scotia constitute prices that are inside the "country that is subject to the investigation" and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i). Section 771(5)(E)(iv) of the Act expressly provides that the Department must determine the adequacy of remuneration "in relation to prevailing market conditions for the good . . . being provided. . . in the country which is subject to the investigation or review." Under section 771(3) of the Act, the term "country" means a "foreign country, a political sub-division, dependent territory, or possession of a foreign country . . " The Department has previously found the inclusion of"political subdivision" within the definition of the term "country" ensures that the Department may investigate subsidies granted by sub-federal level government entities and ensures that those governments qualify as interested parties under the statute. n641 In other words, an examination of subsidies granted by the government of the exporting country includes subsidies granted by sub-federal governmental authorities. Furthermore, 19 CFR 351.511(a)(2)(i) provides that the Department "will normally seek to measure the adequacy of remuneration by comparing the government price to a market-determined price for the good or service resulting from actual transactions in the country in question," i.ea tier-one benchmark. Thus, under our ***regulations***, the preferred benchmark in the hierarchy is an observed market price from actual transactions within the "country" under investigation. The province of Nova Scotia is a "political subdivision" located within the "country" of Canada, and Canada is the "foreign country" that is subject to the instant CVD investigation. Thus, we find that under the statute and the Department's ***regulations*** we are not precluded from using prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when analyzing whether the various provincial governments at issue sold Crown-origin standing timber for LTAR during the POI.

n640 See, e.g., Final Results of 2nd AR IDM at Comment 20, citing section 771(5)(E)(iv) of the Act.

n641 See Final Results of 1st AR IDM at Comment 35.

As indicated elsewhere in this memorandum, the Department has excluded from the scope of the AD and CVD investigations softwood lumber products certified by the ALB as being first produced in the Provinces of Newfoundland and Labrador, Nova Scotia, or Prince Edward Island from logs harvested in the those three provinces. n642 However, we disagree with the notion that the exclusion of products certified as being first produced from logs harvested from Nova Scotia renders private stumpage prices in Nova Scotia ineligible for use as tier-one benchmarks. Regardless of whether certain lumber products from Nova Scotia are excluded from the scope of the AD and CVD investigations, the fact remains that, as explained above, Canada is the "country" subject to the investigation and, therefore, stumpage prices for private-origin standing timber from "political subdivisions" within the country, such as those from Nova Scotia, represent actual transactions in the country under investigation within the meaning of tier one of the CVD ***Regulations***.

n642 See Preliminary Exclusion Memo at 8; unchanged in the final determination.

The Canadian Parties note that in SC Paper from Canada, the Department determined that electricity prices in Alberta were not available to the Nova Scotia-based respondent and, as a result, private electricity prices in Alberta were not suitable for use as a tier-one benchmark when measuring whether GNS sold electricity for LTAR. n643 The Canadian Parties argue that the Department's findings in SC Paper from Canada should lead the Department to similarly conclude that stumpage prices for private-origin standing timber in Nova Scotia are not suitable for use as a tier-one benchmark because it is not available for use in provinces outside of Nova Scotia. We disagree that the Department's findings in SC Paper from Canada preclude the Department from using stumpage prices for private-origin standing timber in Nova Scotia as a tier-one benchmark when measuring whether the GNB, GOQ, GOO, and GOA sold Crown-origin standing timber for LTAR. The Department's decision that private electricity prices from Alberta did not constitute a viable tier-one benchmark was specific to the facts of that investigation and was based upon several factors. Specifically, in SC Paper from Canada, the Department found that: (1) the electricity data from Alberta were not, in fact, based on actual transactions under 19 CFR 351.511 (a)(2)(i), (2) Nova Scotia's sole inter-provincial electricity transmission connection was with New Brunswick and, thus, it was not possible for private electricity produced in Alberta to be provided to producers in Nova Scotia and, therefore, it was not possible to adjust the electricity prices to constitute a "delivered" price as required under 19 CFR 351.511(a)(2)(iv), (3) transmission distances limited the comparability of the electricity produced in Alberta to the Nova Scotia electricity market, and (4) even if the private electricity produced in Alberta were available in Nova Scotia, Alberta's suitability as a benchmark for Nova Scotia would still be in question by virtue of the NSUARB's ***regulation*** of electricity tariffs in Nova Scotia. n644 In contrast, the facts of the instant investigation are distinct from SC Paper from Canada. The purchase and transport of standing timber within Canada is not dependent upon a single, limited, means' which contrasts with the facts considered in SC Paper from Canada involving dedicated power transmission corridors'and, thus, it is possible for standing timber to be sold across provincial borders. Indeed, evidence on the record indicates that the New Brunswick-based JDIL purchased standing timber in Nova Scotia, n645 and that one of Resolute's Quebec-based sawmills purchased standing timber in Ontario. n646

n643 See SC Paper from Canada IDM at 41-42, and 128-130.

n644 See SC Paper from Canada IDM at 41-42.

n645 See, e.g., JDIL Final Calculation Memorandum, where JDIL's datasets indicate that its stumpage benchmark is comprised of private-origin standing timber purchases from Nova Scotia.

n646 See Resolute Primary QNR Response, Part 2 at Exhibit RESB-16.

Having determined that stumpage prices for private-origin standing timber in Nova Scotia constitute prices from within the "country" of provision, the Department examined whether such prices are comparable as discussed under 19 CFR 351.511(a)(2)(i). As discussed below, based on our examination as well as our verification of the underlying data, we continue to find that private-origin standing timber in Nova Scotia are comparable to the Crown-origin timber sold in the provinces at issue and that the prices in the NS Survey constitute a reliable data source to serve as a tier-one benchmark.

Comment 40: Whether the Nova Scotia Benchmark Is Comparable to the Provinces at Issue

In the Preliminary Determination, the Department used the prices of private-origin stumpage in the NS Survey as a tier-one benchmark for comparison to purchases of Crown stumpage in Alberta, Ontario, and Quebec, stating that the survey of private stumpage prices, which was conducted for the GNS by Deloitte in the GNS's ordinary course of business, and the disaggregated unit prices on which the report was based, contain a sizable number of observations, reflect prices throughout the province, and reflect private stumpage prices for a variety of species and log types. n647 The Canadian Parties argue that this benchmark is not comparable to the provinces in which they operate because they do not have similar prevailing market conditions. Specifically, these parties argue that the prevailing market conditions affecting Nova Scotia stumpage are too different from the other provinces based on certain key factors, n648 and that the price information included in the NS Survey is insufficient to allow proper comparison. n649

n647 See PDM at 43-44.

n648 See GOC Etal Common Issues Case Brief at 38-46 and GOC Case Brief at 31-37; see Canfor Case Brief at 47; see West Fraser Case Brief at 23; and see Resolute Case Brief at 35-36.

n649 See GOC Etal Common Issues Case Brief at 39; and see Canfor Case Brief at 47.

The petitioner contends that the benchmark is suitably comparable. n650 The GNS contends that the NS Survey captured a significant volume of the private-origin standing timber harvested during the POI.

n650 See GOC Etal Common Issues Case Brief at 37-46, GOA Case Brief at 30-39, and GOO Case Brief at 46-52; see Canfor Case Brief at 46-48; see West Fraser Case Brief at 22-23; and see Resolute Case Brief at 34-37. See also Petitioner Case Brief at 45-52; see also GNS Case Brief at 11-13.

Department's Position: As discussed in the Preliminary Determination, and in response to other comments in this final determination, the Department finds that there are no private market prices in the provinces whose stumpage programs are under investigation that could serve as tier-one benchmarks. n651 Thus the Department continues to find that the stumpage prices from private-origin standing timber in Nova Scotia are the most appropriate benchmark to measure whether the relevant provincial governments east of British Columbia provided stumpage for LTAR. As explained in Lumber IV., market prices from actual transactions within the country under investigation generally are expected to reflect most closely the prevailing market conditions in the industry under investigation. n652 Further, as discussed in Comment 39 above, we find that stumpage prices for private-origin standing timber in Nova Scotia reflect private prices that are within Canada and, thus, may be used as a tier-one benchmark when determining whether the relevant provincial governments at issue (the GNB, GOQ, GOO, and GOA) sold Crown-origin standing timber for LTAR.

n651 See PDM at 27-42.

n652 See Lumber IV Final Determination IDM at the "Market-Base Benchmark" section.

Under 19 CFR 351.511(a)(2)(i), in choosing such in-country prices, the Department will consider factors affecting comparability. However, the legal requirements governing the Department's selection of benchmarks do not require perfection. n653 In the Preliminary Determination, the Department reiterated its conclusion in Lumber IV that "species and growing conditions are both key factors in determining the market value of standing timber." n654 The Canadian parties argue that various species differ between the provinces to such an extent that the NS Survey is not suitably comparable as a tier-one benchmark. n655 For example, the GOA contends that the fact that Alberta forests do not include red spruce (which grows in Nova Scotia) and Nova Scotia forests do not include lodgepole pine (which grows in Alberta) demonstrates that the two provinces' forests are not comparable, and, thus, disqualifies the use of private-origin standing timber prices in the NS Survey as a tier-one benchmark for Alberta. n656 We disagree with these arguments, addressed in turn below, and continue to find that though there are minor variations in the relative concentration of individual species across provinces, the standing timber in Nova Scotia, New Brunswick, Quebec, Ontario, and Alberta is harvested from similar forests and covers the same core species group (SPF). Accordingly, we find that the transactions for private-origin standing timber in Nova Scotia are comparable to the other four provinces, and suitable as a benchmark. n657

n653 See, e.g., HRS from India 2007 AR IDM at 52, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. See\_section 771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."

n654 See PDM at 44-46 and 49.

n655 See GOC Etal Common Issues Case Brief at 38-42, GOA Case Brief at 31-32, GOO Case Brief at 46-51; see Canfor Case Brief at 47; see West Fraser Case Brief at 22-23; and see Resolute Case Brief at 35.

n656 See GOA Case Brief at 33.

n657 Id. at 44.

In support of their arguments, the Canadian Parties cite to the Miller Report that concludes that species present in Quebec, Ontario, or Alberta may "tend" to be of a lower quality than in Nova Scotia, or may not be as prevalent in the Nova Scotia forest as compared to other provinces to the east of British Columbia. n658 However, we find the report's hedged conclusions, to the extent they are accurate, are not supported by any record evidence that differences in quality or species prevalence precludes a comparison between the Nova Scotia benchmark and reported Crown stumpage in the other provinces. In fact, record evidence indicates the opposite. The species included in the eastern SPF species basket, which grows in Nova Scotia, were also the primary and most commercially significant species reported in the species groupings for New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, and a portion of Alberta. n659 The respondent firms' actual transactions, as verified by the Department, support our finding that SPF species continue to be the dominant species that grow in all the provinces east of British Columbia. n660 Further, as recognized by the GOC, SPF lumber has "sufficiently common characteristics to be treated interchangeably in the lumber market." n661 The interchangeability of standing timber in the SPF species category is also reflected in the manner in which the provincial governments set their stumpage prices. For example, record evidence indicates that the GNB, GOQ, and GOO treat SPF timber as a single category for data collection and pricing purposes. In particular, in New Brunswick, Quebec, Ontario, and Alberta, the provincial governments charge a single, "basket" price for Crown-origin standing timber that falls within the SPF species category. n662 In Quebec, the GOQ even adds larch into the SPF basket it uses to price Crown-origin standing timber, while in Ontario, the GOO adds tamarack into its SPF basket. n663 Thus, although there are some specific SPF-based species that may differ from province to province, as the provinces do not distinguish between SPF species when setting Crown timber prices, we find these differences are not disqualifying.

n658 See GOC Etal Common Issues Case Brief at 40-41, citing Characteristics of Nova Scotia's Wood Fiber Market at 22, 29-31 (Miller Report), as contained in the GOC Etal Primary QNR Response at Exhibit GOC-STUMP-7.

n659 See PDM at 44; and see GOA Primary QNR Response at ABIV-34 (timber dues rates set uniformly for "coniferous timber"); GNB Primary QNR Response at NBII-6 (Crown timber prices for "SPF Sawlogs" and "SPF Studwood & Lathwood"); Ontario Crown Timber Charges for Forestry Companies, Petition Exhibit 181 (single price for "Spruce/Jack Pine/Scots Pine/Balsam Fir/Larch"); GOQ Primary QNR Response at QC-S-37 (describing equation to set stumpage for "SPFL").

n660 See GNS Verification Report at 8-9, NS-VE-8A-F, NS-VE-8A-C and NS-VE-10. See also, e.g., GOO IQR at 5 and 19; and see, e.g., GOC Etal Common Issues Case Brief at 38-42 and 70.

n661 See GOC Etal Common Issues Case Brief at 39.

n662 See GNB Primary QNR Response at NBIII-9; see GOO Primary QNR Response at 4 and 19; see GOQ Primary QNR Response at 53.

n663 See GOO Primary QNR Response at 4 and 19; see GOQ Primary QNR Response at 53.

The Canadian Parties also argue that the evidence on the record reveals differences in the size of standing timber purchased and harvested through stumpage transactions in the different provinces, which, they allege, demonstrates that Nova Scotia standing timber is not comparable to standing timber in Alberta, and, therefore inappropriate as a benchmark. n664 Specifically, they contend that information in the NS Survey concerning the DBH of the full forest inventory does not correlate to information on harvested timber, as it includes smaller trees that have not reached maturity and are not economically harvestable. n665 We disagree. The Department verified that, in the calculation of DBH for the NS Survey, the GNS measures only merchantable trees, e.g. trees that are large enough to be sold for stumpage, and therefore parties' contention that trees which are not economically harvestable have been included in the NS Survey is unfounded. n666 Furthermore, even if there is some small variation in the relative average diameter of trees harvested in Nova Scotia and Alberta, the Canadian Parties have not cited evidence that this differential renders the timber insufficiently comparable. As previously stated, the legal requirements governing the Department's selection of benchmarks do not require perfection. n667 Although parties have cited evidence that standing timber prices, on some level, respond to size, they have not demonstrated that they respond to such a degree as to render Alberta and Nova Scotia trees incomparable on that basis. n668

n664 See GOC Etal Common Issues Case Brief at 42-43, see GOA Case Brief at 32-39; see Canfor Case Brief at 47; and see West Fraser Case Brief at 22-23.

n665 Id.

n666 See GNS Verification Report at 4-5 and NS-VE-4 at 27-30 and 34.

n667 See, e.g., HRS from India 2007 AR IDM at 52.

n668 Further, we reiterate that legal requirements governing the Department's selection of benchmarks do not require perfection and that the application of a standard requiring perfect comparability would likely disqualify any potential LTAR benchmark from consideration. See HRS from India 2007AR IDM at 52.

Additionally, the Canadian Parties contend that the NS Survey data do not include an accurate review of all sizes of timber that would be considered "sawable" timber in Quebec, Ontario, and Alberta. Specifically, the Canadian Parties claim that because logs in their respective provinces are smaller, logs that are pulped in Nova Scotia would be processed as sawlogs in Quebec, Ontario, and Alberta. Thus, the Canadian Parties argue that a Nova Scotia benchmark comprised only of sawlogs and studwood logs (e.g., logs that are used by sawmills) is not comparable to logs harvested and used by sawmills in Quebec, Ontario, and Alberta. n669

n669 See GOC Etal Common Issues Case Brief at 47-51.

We disagree with this argument. In this investigation, we have focused on standing timber that is harvested by sawmills for use in the production of lumber, and thus, we instructed the respondent firms to report the volume and value of Crown-origin sawlogs that they purchased during the POI. n670 Accordingly, we used a benchmark that was similarly comprised of prices charged for standing saw timber in Nova Scotia. n671 In this way, we ensured a comparison that consisted solely of logs used by sawmills to make lumber. Thus, to include pulplogs into the Nova Scotia benchmark would create a mismatch between the respondents' reported sawable timber (exclusive of pulplogs) and a broader Nova Scotia benchmark including both sawable logs and pulplogs. Furthermore, the Nova Scotia benchmark consists of two types of saw timber: sawlogs and studwood. n672 As indicated in the GNS Verification Report, while both sawlogs and studwood are softwood sawable logs used in the production of softwood lumber products, studwood generally denotes smaller diameter logs suitable for sawing into 8-foot, 9-foot, or 10-foot studs. n673 Thus, we find that the Nova Scotia benchmark incorporates a range of log types that are used by sawmills (including log types on the small end of the sawlog spectrum) that results in a conservative and comparable benchmark.

n670 See Primary QNR, Section III, at Table 1, which instructed the respondent firms to report all their sawmills' purchases of Crown-origin standing timber.

n671 See GNS Verification Report at 6 and NS-VE-3, which indicate that the NS Survey contained two log types: sawlogs and studwood, defined as logs "intended" to be sawn into lumber.

n672 See GNS Pre-Verification Correction Data - NS-VE-1, Attachment 5, dated June 28, 2017.

n673 See GNS Verification Report at 4.

Additionally, we find the Canadian Parties' claim that logs destined for pulp mills in Nova Scotia would have been processed as sawlogs in Quebec, Ontario, and Alberta to be speculative. Other than conjecture, the Canadian Parties provide no evidence for their argument. Further, Canadian Parties' claims on this point are not borne out in the record, specifically the DBH data reported by the provincial governments. The GNS reported that the quadratic mean of DBH for all softwood species on private land is 17.29 cm and 15.9 cm for SPF species. The GOA reported that the DBH of SPF standing timber species in Alberta ranges from 18.2 cm for black spruce to 24.6 cm for white spruce. The GOQ reported that the DBH of SPFL standing timber species ranges from 15 cm to 22 cm. n674 The GOO reported that the DBH of SPF logs destined to sawmills and pulpmills in 2015 was 15.32 cm. n675 Notably, the DBH measurements reported by the provincial governments reflect the DBH of standing timber in general and therefore reflect the diameters of logs that were used by sawmills and pulpmills. n676 As noted in the Preliminary Determination, the DBH of standing timber in Nova Scotia's private forests are in line with and comparable to the DBH of trees that grow in the Crown forests of the provinces east of British Columbia whose stumpage programs are under examination. n677 The fact that the DBH of standing timber across the provinces at issue falls within the same general range belies the Canadian Parties' claim that private-origin standing timber in Nova Scotia is disproportionately larger compared to trees in Quebec, Ontario, and Alberta thereby requiring the inclusion of pulp-grade logs into the Nova Scotia benchmark in order to ensure comparability. n678

n674 See GOQ Primary QNR Response at Vol. 1 at 24.

n675 See GOO Primary QNR Response at Exhibit ON-GEN-7-C at 3.

n676 See GOQ Primary QNR Response at Vol. 1 at 22-24; see also GOO Primary QNR Response at Exhibit ON-GEN-7-C.

n677 Id.

n678 Further, as noted elsewhere in this memorandum, the legal requirements governing the Department's selection of benchmarks do not require perfection and that imposition of such a requirement would likely preclude the use of most, if not all, potential tier-one benchmarks. See, e.g., HRS from India 2007 AR IDM at 52.

We also disagree with the Canadian Parties that there are fundamental differences between the Acadian forest (which encompasses Nova Scotia) and the boreal forest (which encompasses Quebec, Ontario, and large areas of Alberta). As discussed in the Preliminary Determination, n679 we find that species and DBH are the two most critical elements when assessing whether prices for private-origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Quebec, Ontario, and Alberta. While Nova Scotia is not located in the same forest as Quebec, Ontario, and Alberta, as discussed above, the two forests are comparable in terms of species and DBH in that both forest regions are dominated by SPF-based species and the DBH of the forests' standing timber are in line with one another. We also find that the Canadian Parties have not cited any evidence demonstrating that growing conditions in the Acadian and boreal forests are so different as to render trees from the two forests incomparable to one another.

n679 See PDM at 45-46.

The Canadian parties also argue that Nova Scotia is a geographically small province and that wood fiber is relatively close to the manufacturing facilities. They argue that the province's established infrastructure ensures access to wood fiber without the need for long hauls or expensive road construction or maintenance costs. n680 They further argue that the sawmills in Nova Scotia are close to their respective tree stands and benefit from a well-developed infrastructure that minimizes the costs associated with transporting harvested timber, which in turn, allows private land owners to charge higher stumpage prices. The Canadian Parties also argue that the short distances from tree stand to mill and the well-developed infrastructure that exists in Nova Scotia are not present in the other provinces under examination and that this fact calls into question whether private-origin standing timber prices in Nova Scotia are sufficiently comparable to be used as a tier-one benchmark.

n680 See GOC Etal Common Issues Case Brief at 45, citing to Economic Analysis of Factors Affecting Cross Jurisdictional Stumpage Price Comparisons by John Asker, Ph.D. at 52-53 (Asker Report), as contained in the GOC Etal Primary QNR Response at Exhibit GOC-Stumpage 6.

In making their arguments on this point, the Canadian Parties rely on information and conclusions in the Asker Report. The Asker Report states that Nova Scotia has 0.49 kilometers of road per square kilometer of land, while Alberta has only 0.34 kilometers of road per square kilometer. And, based on this information, the Asker Study concludes that:

...assuming the same cost for constructing a meter of road, and assuming

this road density difference is similar in forest regions, the road

density difference between Nova Scotia and Alberta could result in total

construction differences of approximately C$1,000 per square

kilometer..." n681

n681 See Asker Report at 52-53.

As noted by the petitioner, the Canadian Parties' assumptions are further based on an estimate of average road construction costs offered by "one Nova Scotia logger." n682 As the quote from the Asker Study reveals and as the petitioner highlights, the Canadian Parties' claims concerning the relative differences in tree stand to mill distance and infrastructure development between Nova Scotia and the provinces of Quebec, Ontario, and Alberta are based on two assumptions and estimated data from a single logger in Nova Scotia. Thus, we find the conclusions in the Asker Report to be based on speculation and not substantial evidence. Additionally, in contrast to the conclusions of the Asker Study, information from the respondent parties indicates that some mills are located close to their respective standing timber sources, thereby resembling the conditions that Canadian Parties claim exist in Nova Scotia. n683 Thus, to the extent such differences in hauling distance and infrastructure development exist, we find that the Canadian Parties have not adequately substantiated and quantified the extent of the purported differences or that any differences are reflected in Nova Scotia stumpage prices.

n682 See Petitioner Case Brief at51, citing to Asker Report at 52-53.

n683 See, e.g., the KPMG Report at Schedule 2.

The Canadian Parties also argue that the Nova Scotia market for softwood stumpage is influenced by the number and distribution of pulp mills in the province. Specifically, the Canadian Parties argue that the demand from pulp mills for wood fiber exerts upward pressure on stumpage prices by creating ***competition*** for stumpage rights and by providing an outlet for lower-quality timber harvested by sawmills and for sawmill residual products, which may result in sawmills paying more for standing timber. n684 They claim the upward pressure on stumpage prices in Nova Scotia is not present in Quebec, Ontario, and Alberta, and should lead the Department to refrain from using private prices for standing timber as a tier-one benchmark. Once again, the Canadian Parties claim a difference exists between the market for private-origin standing timber in Nova Scotia and the other provinces at issue but, other than claiming that pulp mill distribution "influences" stumpage prices in Nova Scotia in a manner that is not present elsewhere in Canada, they fail to quantify the extent of the purported difference or even to demonstrate that such a difference exists. Thus, we find that Canadian Parties have not substantiated their claims concerning the "influence" of pulp mill distribution, nor have they demonstrated that any such difference renders the two sources incomparable on that basis.

n684 See GOC Etal Common Issues Case Brief at 45, citing to Asker Study at 53-54.

We find that the remaining differences between the Nova Scotia timber market and the timber markets in Quebec, Ontario, and Alberta, as alleged by the Canadian Parties, involving land ownership distribution, land management policies, and contractions in the lumber industry associated with the 2007-2009 recession in Nova Scotia, do not render the NS Survey prices unsuitable as a benchmark. n685 Regarding these supposed dissimilarities, the Canadian Parties do not provide enough information to determine the relative impact, if any, of land ownership distribution or land management policy differences as well as any lingering differences in the impact of the recession across the aggregated actual transactions. Moreover, we find that these and other arguments regarding comparability incorrectly presuppose that the Department must meet an impossible standard of finding a tier-one benchmark that accounts for every purported market condition. As noted elsewhere in this memorandum, the Department has previously rejected the notion that its tier-one LTAR benchmarks must be identical to the good sold by the foreign government because the application of such a standard would inevitably lead to the disqualification of most, if not all, potential LTAR benchmarks under consideration. n686

n685 See GOC Etal Common Issues Case Brief at 46.

n686 See HRS from India 2007 AR IDM at 52.

Based on the foregoing, we continue to find that prices for private origin standing timber in Nova Scotia are comparable to Crown-origin standing timber in New Brunswick, Quebec, Ontario, and Alberta and, therefore, may serve as a tier-one benchmark under 19 CFR 351.511(a)(2)(i).

Comment 41: Whether Nova Scotia's Private Stumpage Survey Data Are Flawed

The Canadian Parties argue that flaws in the NS Survey itself should prevent the Department from relying on it as a tier-one benchmark. The Canadian Parties argue that the NS Survey: (1) omitted stumpage prices for pulp logs that accounted for a significant portion of the softwood timber harvested in the province, (2) contained biases in the transaction sizes and the regional make-up of the pricing data improperly skewed the prices upwards, (3) eschewed realistic conversion factors in favor of outdated conversion factors that overstated volume and price, and (4) contained systemic flaws that overstated prices. n687 The Canadian Parties further imply the NS Survey is unreliable because it contains prices for 9 months of the POI. n688 The GOO argues that the survey is an incomplete and distorted sample of prices because it lacks purchase data from small-sized purchasers and transactions involving industrial freehold land. n689 The GOQ argues that NS Survey data are skewed because they are based on a very small sample size stemming from low response rates to the survey. The GOQ further argues that the overall volume in the survey is very small compared to the volumes harvested in Quebec. n690 The GOA claims that the NS Survey is not reliable because many of the transactions do not represent actual prices paid to private landowners for stumpage. n691

n687 See GOC Etal Common Issues Case Brief at 34-71.

n688 Id. at 63.

n689 See GOO Case Brief 54-56.

n690 See GOQ Case Brief at 42-43.

n691 See GOA Case Brief at 39-40.

The petitioner argues that the NS Survey reflects valid and accurate benchmark data. n692 The GNS argues that the NS Survey is robust and was verified; the survey results are reliable and representative of private stumpage prices in Nova Scotia. n693

n692 See Petitioner Rebuttal Brief, at 52-55.

n693 See GNS Rebuttal Brief, at 4-11.

Department's Position: We disagree with the Canadian Parties' arguments that the data in the NS Survey are flawed and not suitable for use as a tier-one benchmark. The Canadian Parties argue that pulplogs comprise a significant portion of the timber harvest in Nova Scotia and, thus, the failure to capture pulplog prices constitutes a major flaw in the NS Survey. We disagree. The portion of the log harvest accounted for by pulp-grade logs in Nova Scotia is not relevant to the Department's analysis. As discussed elsewhere in this memorandum, as part of its analysis of whether the provincial governments at issue sold Crown-origin standing timber for LTAR, the Department instructed the respondent firms to report the volume and value of standing saw timber that their respective sawmills purchased from the Crown during the POI. n694 As a result, the volume of Crown-origin standing timber reported to the Department by the respondents does not include logs destined for pulp mills. The prices contained in the NS Survey similarly reflect the prices paid for standing timber identified as sawlogs and studwood, which are the two log types that are processed by sawmills, and, as such, reflect the same log types that were included in the stumpage data reported to the Department by the respondent firms. n695 Thus, to include pulplogs into the Nova Scotia benchmark, as suggested by the Canadian parties, would create an imbalance in the benefit calculation.

n694 See Primary QNR, Section III, at Table 1, which instructed the respondent firms to report all their sawmills' purchases of Crown-origin standing timber.

n695 See GNS Verification Report, NS-VE-6 at 7, which indicates that the NS Survey only solicited information on log types that are processed by sawmills (e.g., sawlogs, studwood, and lathwood).

Furthermore, we disagree with the Canadian Parties' claims that the log type definitions utilized by the NS Survey were unclear and render the survey results unreliable. The Canadian Parties take issue with the fact that the NS Survey relied on definitions that were based entirely on intended use and that it was not clear at what point the intended use was to be determined or by whom. The log type classifications contained in the NS Survey reflect definitions that harvesters in Nova Scotia use in the ordinary course of business. n696 Additionally, the use of log type definitions that are based on intended use is not limited to Nova Scotia. The GOQ, GOO, and GOA rely on similar use-based definitions when determining whether a log is classified as a sawlog or a pulplog. n697 Thus, the fact that provinces in which the provision of stumpage for LTAR is under examination utilize use-based definitions when categorizing log types supports our finding that usage-based definitions in the NS Survey are sound and reliable. Further, the Department verified that, based on these production definitions, the NS Survey covered only private stumpage transactions for softwood sawable products, which is the same merchandise for which we are seeking a benchmark. n698 Moreover, the source documents that we examined at verification for individual transactions included in the NS Survey identified no purchases of pulpwood logs. n699

n696 See GNS Verification Report at 4, "the definitions reflect common product types, and they are the terms used in the normal course of business for lumber mills."

n697 See, e.g., GOO Primary QNR Response at 4, "the Province of Ontario classifies its stumpage sales based on the destination. That is, in Ontario if the timber harvested is destined to a sawmill the timber is considered a sawlog...."

n698 See GNS Verification Report, NS-VE-6 at 7, which indicates that the NS Survey only solicited information on log types that are processed by sawmills (e.g., sawlogs, studwood, and lathwood).

n699 See GNS Verification Report, at 3, and 8-9.

The Canadian Parties also argue that the fact that a non-sawmill facility was among the largest studwood purchasers in the NS Survey calls into question the reliability of the survey data. The Canadian Parties argue this fact demonstrates that the survey data do not, as the GNS claims, reflect use-based definitions for log types and that the survey data do not contain prices for standing timber but instead reflect prices paid for only part of the harvested tree. We disagree with the Canadian Parties' arguments.

In discussing how sawmills use sawlogs and studwood logs in their production process and the types of mills that use softwood logs and studwood logs, the GNS stated the following:

...based on the general characteristics of a tree, the harvester can

determine the best use of the tree. [The GNS] added that trees can

produce several different types of log types (e.g., pulplog, studwood,

sawlog). In such instances, the seller of the tree would sell the section

of the tree to the appropriate mill for that quality of the wood (e.g.,

the studwood length to a sawmill, the sawmill length to a sawmill,

etc.). n700

n700 See GNS Verification Report at 4.

At verification, the officials who conducted the NS Survey explained that "Companies will sell the portion of the harvest not suited to their mill as roadside sales to other mills," and that the NS Survey "surveyed initial studwood and sawmill grade purchases, as brought through the mill gate from the logging site." n701 Additionally, the NS Survey explicitly instructed the respondents to submit data on purchases of standing timber and not for harvested logs. n702 Further, at verification, the Department examined standing timber purchases made by the non-sawmill in question and "verified that this purchase was for subject studwood." n703 In particular, the source documents for the non-sawmill in question reflect a stumpage price for a product that is identified as studwood. n704 Thus, the source documents demonstrate that the non-sawmills paid a stumpage price for standing timber and not, as the Canadian Parties' claim, a price that reflects only a portion of a harvested log. Our review of source documents for other transactions contained in the NS Survey also reflect the purchase of standing timber, as opposed to the purchase of a portion of harvested log. n705

n701 Id.

n702 See GNS Verification Report, NS-VE-6 at 33.

n703 See GNS Verification Report at 8.

n704 Id. at NS-VE-7.

n705 See GNS Verification Report, at 3, and 8-9.

We also disagree with the Canadian Parties' claims that the NS Survey contains biases in terms of transaction size and that the regional make-up of the pricing data improperly skewed the prices upwards. According to the Canadian Parties, the size of the transactions in the NS Survey indicate that the prices do not reflect payments for a given tree, but, rather, are lump-sum prices that reflect the cost of stumpage rights for an entire tree stand. They further argue that the volumes in the NS Survey only reflect volumes associated with harvested sawlog and studwood logs that are destined for sawmills. In other words, the Canadian Parties claim that the value data in the NS Survey are broader than the volume data from the survey, which in turn results in an overstated benchmark unit price. The Canadian Parties contend that their lump-sum price theory is bolstered by the fact that much of the survey data come from the Eastern region of Nova Scotia where the Port Hawkesbury Paper mill is located, a facility that they claim purchases timber in lump-sum transactions.

Other than noting that certain transactions in the NS Survey contain relatively low volumes, the Canadian Parties provide nothing more than conjecture to support their claim that the stumpage data reflect values for an entire tree stand while the volumes in the survey reflect only limited volumes of certain, specified log types. Further, record evidence contradicts the Canadian Parties' claims. For example, the NS Survey very clearly instructed survey respondents to report the "stumpage rates" they paid for "softwood sawlogs," n706 and the source documents on which the NS Survey is based indicate stumpage prices paid for sawlogs and studwood. n707 Further, in making their arguments, the Canadian Parties fail to mention that Deloitte conducted on-site verifications to ensure that the survey respondents submitted accurate information that adhered to the survey instructions. n708

n706 See GNS Verification Report at NS-VE-6 at 27.

n707 See GNS Verification Report at NS-VE-8E at 2.

n708 See GNS Verification Report at NS-VE-6 at 45-47.

We also find that Canadian Parties' comments concerning the regional make-up of the NS Survey data do not support their claim that the value data in the survey are overly broad. The Canadian Parties' comments on this point hinge on the following assumptions: (1) Port Hawkesbury Paper, in addition to buying standing timber in lump-sum transactions, accounted for a substantial number and volume of the transactions contained in the NS Survey, (2) despite the instructions in the survey to provide "stumpage rates" for "softwood sawlogs," Port Hawkesbury Paper responded to the survey with volume and value data that were not on the same basis, and (3) the purported flaws in the data submitted by Port Hawkesbury Paper are representative of the flawed data reported by the remaining survey respondents. First, it is not clear that Port Hawkesbury responded to the NS Survey. The NS Survey indicates that not all recipients of the survey chose to participate. n709 Further, other than the survey respondents whose source documents the Department examined at verification, the identities of the survey respondents are not on the record. n710 Thus, it is speculative to claim that Port Hawkesbury responded to the NS Survey. Moreover, in the absence of any source documentation, and based on the reasons discussed above, it is even more speculative to claim that the survey results from Eastern Nova Scotia contain volume and value data that are not on the same basis.

n709 See GNS Verification Report, NS-VE-6 at 10.

n710 See GNS Verification Report, NS-VE-1 at Attachment 5.

Further, how the GNS uses the private forest data collected in the NS Survey and the information reviewed by the Department at verification undercuts the Canadian Parties' claims that the NS Survey is unreliable. The GNS, in the ordinary course of business, relies on periodic surveys of private-origin standing timber as the basis for setting Crown-origin stumpage prices. The data in the NS Survey collected on behalf of the GNS was for a similar purpose. n711 Further, the record indicates that the GNS commissioned the NS Survey several months prior to the filing of the Petition, and that the survey was not conducted specifically for purposes of the instant CVD investigation. n712 Moreover, information from the GNS contradicts the Canadian Parties' allegation that the NS Survey contains value data that are overly broad. In its initial questionnaire, the GNS explained that Deloitte "specifically sought to validate several data elements, including . . . confirmation that the reported value included only the transaction price for the private stumpage, excluding the payment of private silviculture fees, and excluding any non-stumpage charges that may have been "bundled' in the Registered Buyer's records." n713 And, at verification, the Department confirmed that the term "transaction," as used in the NS Survey, reflected the negotiated, contracted price between the buyer and seller. n714 On this basis, we find there is no evidence supporting the Canadian Parties' claims that the value and volume data in the NS Survey were collected on a different basis.

n711 See PDM at 43.

n712 See GNS Verification Report at 6.

n713 See GNS Primary QNR Response at Exhibit NS-5 at 4.

n714 See GNS Verification Report at 7. The verbatim definition of the term "transaction," as employed in the NS Survey, is business proprietary and cannot be provided in this memorandum.

In addition, the survey data examined by the Department at verification contain volume and value information that permits the Department to calculate a benchmark stumpage price on a weighted-average basis. As the Court has previously noted, when calculating an LTAR benchmark weight-averaging assigns each price a weight proportional to the quantity shipped at that price, thereby ensuring that high values with corresponding low volumes do not skew the benchmark upward. n715 Thus, even if there are abnormally low volume, high value transactions present in the NS Survey, a possibility that we find the Canadian Parties have failed to demonstrate, weight averaging the data ensures that such observations will not skew the benchmark. Further, Deloitte, the firm that conducted the NS Survey on behalf of the GNS, performed statistical analyses on the survey data to ensure that the data points did not substantially deviate from the mean. n716

n715 See [*RZBC Group, 100 F.Supp. 3d at 1309.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GNP-NFV1-F04B-W010-00000-00&context=)

n716 See, e.g., GNS Verification Report, VE-6 at 20.

We also disagree with the Canadian Parties that the conversion factors used in the NS Survey to convert the data into a common unit of measure improperly skewed the data. The Canadian Parties claim that the NS Survey relied on an outdated, unreliable conversion factor. On this point, the Canadian Parties fail to mention that the conversion factor utilized in the NS Survey is the same conversion factor used by the GNS in its ordinary course of business. n717 In fact, at verification, Deloitte stated that the use of the conversion factor by the GNS was the very reason it relied upon the factor for purposes of the NS Survey. n718 The fact that the GNS relies upon the conversion factor in question as part of its ordinary course of business leads us to conclude that the factor is reliable. Moreover, although the Canadian Parties express concern with the conversion factor's age, particularly in light of intervening changes to the Nova Scotia scaling manual, their concern is unfounded. The GNS confirmed between 2001 and 2009 that the conversion factor continues to be accurate for use in government business, with any "minor difference" being "statistically insignificant." n719

n717 See GNS Verification Report at 9.

n718 See GNS Verification Report, NS-VE-1, Attachment 3 at 4, "Confirmation that the official conversion factors delineated by NSDNR, and summarized at Appendix A, were applied."

n719 See GNS Primary QNR Response at 14.

The Canadian Parties also argue that data for a survey respondent's transaction, as contained in the NS Survey, are flawed due to mistaken assumptions that Deloitte employed when selecting the conversion factor. Cross referencing the NS Survey data with other proprietary stumpage data on the record, they claim the error involving this survey respondent is pervasive and, thus, calls into question the reliability of the rest of the NS Survey data. We disagree. As noted by Deloitte officials, not all of the survey respondents reported their purchases of private-origin standing timber in the same unit of measure. n720 Thus, to ensure that the private stumpage survey data were aggregated on a uniform basis, Deloitte officials, where necessary, converted the standing-timber purchases reported on a tonnage basis into cubic meters using a conversion factor of 1.167, which corresponds to the conversion factor used by the GNS. n721 During examination of one of the pre-selected transactions, Deloitte officials explained that they had inadvertently applied the wrong conversion factor to a survey respondent's reported transaction. At verification, Deloitte officials "backed out" the incorrect conversion and recalculated the conversion using the standard 1.167 factor that was applied to the transactions contained in the NS Survey, thereby correcting the error. n722 We collected the calculations and source documents related to the correction. n723 Thus, we find that Deloitte officials properly substantiated and corrected the error involving the transaction at issue.

n720 See GNS Verification Report at 9 and NS-VE-1, Attachment 3, page 4, footnote 4.

n721 See GNS Verification Report at 9.

n722 Id.

n723 Id.

Due to confidentiality agreements, the GNS and Deloitte were unable to divulge the identities of the respondents to the NS Survey. Thus, other than the names of parties that were identified at verification during our examination of source documents for individual transactions listed in the NS Survey, the list of parties that responded to the NS Survey is not on the record. Therefore, we find that there is an insufficient basis to infer the identities of the parties that responded to the NS Survey and therefore we reject the Canadian Parties' claims that the same conversion error remains uncorrected for a substantial portion of other transactions reported in the NS Survey data. Further, we have information on the record regarding the survey respondent whose transaction was incorrectly converted; we find that other record evidence from this party, submitted outside of the NS Survey, counters the Canadian Parties' claim that the conversion error was pervasive in the NS Survey. n724

n724 See Petitioner Rebuttal Brief at 57, which cites to business proprietary information that cannot be summarized on the public record.

When compiling the NS Survey, Deloitte officials incorporated a price adjustment involving one of the survey respondents into the survey data. n725 However, in preparing for verification, Deloitte officials, in order to improve the accuracy of the data, revised the treatment of the price adjustment for this survey respondent. During the minor corrections phase of verification, Deloitte officials explained this revision to the survey respondent's data and stated that the revision only involved a single survey respondent. n726 At verification, we examined individual transactions that involved this survey respondent. Our review of the documentation revealed no discrepancies. n727 The Canadian Parties claim this revision demonstrates the unreliability of the NS Survey. The GOA further argues that this price adjustment demonstrates that the NS Survey does not reflect actual prices paid to private landowners. We disagree with both these claims. As an initial matter, nearly every provincial government and respondent firm under examination in this investigation submitted revisions and minor corrections at verification. n728 Thus, the fact that the GNS provided minor revisions to its questionnaire responses at verification does not distinguish it from the other Canadian parties involved in this proceeding. Also, as noted above, the Deloitte officials have long been aware of the price adjustment at issue, discussed the price adjustment in the report that summarizes the NS Survey, and, during the minor corrections phase of verification, merely revised their treatment of the price adjustment because they found it yielded a more accurate stumpage price. n729 Further, the price adjustment does not constitute a revision of the underlying data in the NS Survey, but, rather, a change in how the price adjustment was applied with regard to purchases made by a single survey respondent.

n725 See, e.g., GNS Verification Report, NS-VE-1, Attachment 3 at 4, footnote 3 where this this price adjustment is discussed. Discussion of the price adjustment involves business proprietary information and, therefore, we can only describe it in general terms in this memorandum.

n726 See GNS Verification Report at 3 and NS-VE-1.

n727 Id.

n728 See, e.g., GOQ Verification Report and Resolute Verification Report.

n729 Id. at 2-3.

Concerning the GOA's claim that the NS Survey does not reflect actual stumpage prices paid to private landowners, proprietary information in the GNS Verification Report makes it clear that the survey data, including the price adjustment involving the survey respondent at issue, reflected actual standing timber prices. n730 Thus, we reject the Canadian Parties' claim that this revision in the treatment of a price adjustment for a single survey respondent constitutes evidence that the entire NS Survey is unreliable.

n730 See GNS Verification Report at 8 and Exhibit NS-VE-8C.

We disagree with the GOQ's claims that the NS Survey is skewed due to a small sample size and low response rate. The NS Survey "included approximately 36% of private softwood sawable volume purchased in Nova Scotia" during the survey period, n731 which we find constitutes sufficiently robust sample size of Nova Scotia's private harvest. We also disagree that the NS Survey had a low response rate. Deloitte identified 26 registered buyers as potential survey respondents, of which only five either could not be contacted or chose not to participate. n732 Further, the NS Survey, in terms of the number of respondents and the absolute volume of SPF timber reported by the survey respondents, is on par with the private-origin standing timber harvest data contained in the MNP Ontario Survey that the GOO placed on the record of the investigation to support its claim that Ontario's private stumpage is not distorted. n733

n731 See GNS Verification Report at NS-VE-6 at 10.

n732 Id.

n733 See GOO Primary QNR Response at Exhibit ON-PRIV-1 at 2-3.

Additionally, the Canadian Parties imply that the NS Survey is unreliable because it "covered only the latter three quarters of the POI" n734 while the GOQ argues that the NS Survey is flawed because total volume in the survey is small compared to the volume of auction-origin timber harvested in Quebec. n735 As noted elsewhere, the legal requirements governing the Department's selection of benchmarks do not require perfection. n736 Further, in the case of Quebec and Alberta, the Department is conducting its stumpage benefit calculation on an annual basis and, thus, calculated the Nova Scotia benchmark as a weighted annual average comprised of monthly data for the months April through December 2015, thereby mitigating the lack of monthly data for the months of January through March. Additionally, the lack of data for three of the 12 months of the POI is not limited to the NS Survey. The aggregate auction dataset submitted by the GOQ, which the GOO argues may serve as the basis for a tier-one benchmark for Crown-origin stumpage purchases in Ontario, lacks pricing data for SPF species for the months of March, April, and June and, for the appearance grade species, lacks pricing data for four out of the 12 months during the POI. n737 Similarly, the proprietary stumpage purchase dataset submitted by Resolute lacks private purchase and auction purchase data for certain months of the POI, yet these omissions have not prevented the GOQ and Resolute from arguing that the Department should rely on these data as the basis of its tier-one benchmark. n738

n734 See GOC Etal Common Issues Case Brie at 63.

n735 See GOQ Case Brief at 63 and

n736 See, e.g., HRS from India 2007 AR IDM at 52, "There is no requirement that the benchmark used in the Department's LTAR analysis be identical to the good sold by the foreign government. See also section 771(5)(E)(iv) and 19 CFR 351.511. In fact, the imposition of such a requirement would likely disqualify most, if not all, potential benchmarks under consideration in a LTAR analysis."

n737 See GOQ Primary QNR Response at Exhibit Stump-6, Table 11.

n738 See Resolute Primary QNR Response at Exhibit RESB-16; see also Resolute Supp QNR 6 Response at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6.

We also disagree with the GOQ that the Department should dismiss the NS Survey because the total volume contained in the survey is small compared to the volumes sold in Quebec. To accept this argument is to reject the use of the NS Survey data simply because the overall private-origin standing timber harvest in Nova Scotia is smaller than that of Quebec. Such an argument ignores the fact that the Department has found the Nova Scotia market for private-origin timber to be non-distorted, n739 a finding that the Canadian Parties do not dispute. Further, the GOQ's argument on this point overlooks the fact that for certain months in its aggregate auction price dataset, the volume of auction-origin timber is on par with volumes sold in Nova Scotia. n740

n739 See PDM at 42-43.

n740 See GOQ Primary QNR Response at Exhibit Stump-6, Table 11; see also GNS Verification Report, Exhibit NS-VE-1, Attachment 4.

Additionally, we disagree with the GOO that the NS Survey is unreliable because it did not include standing timber from industrial freehold lands and because the survey lacks data from "small loggers and harvesters." n741 The GOO's concerns regarding the absence of industrial freehold volumes in the NS Survey are addressed and allayed by information provided by the GNS in its initial questionnaire response where it explained that (1) "softwood timber harvested on industrial freehold lands is not a significant portion of the softwood timber harvested in Nova Scotia," (2) "the purchase and harvesting of timber on industrial freehold lands has no meaningful impact on the purchase and harvesting of timber on small private woodlots," and (3) "generally speaking, owners of industrial freehold lands do not typically offer their standing timber for sale to unrelated third parties. If any industrial freehold wood is sold to third parties, these transactions typically involve the sale of harvested logs where the owner does not have a use for those logs in its own facility." n742 Thus, we find the GOO's concerns on this point to be misplaced.

n741 See GOO Case Brief at 54-56.

n742 See GNS Primary QNR Response at 19.

As for the GOO's claim that the NS Survey lacks purchase data from small-sized loggers and harvesters and, thus, is not representative of Nova Scotia's private timber market, as noted above, the NS Survey covered "approximately 36 percent of private softwood sawable volume purchased in Nova Scotia" during the survey period," a sample size that we find to be sufficiently robust and representative. n743 Further, the GNS's "policy" has been to benchmark the prices it charges for Crown-origin standing timber based on the prices paid by Registered Buyers (e.g., buyers who acquire more than 5,000 m3 of standing timber in a year). n744 Thus, the decision by Deloitte officials to limit respondents to the NS Survey to private-origin standing timber purchases made by Registered Buyers merely adopts the long-standing practice of the GNS. n745 Further, we find it is reasonable to assume that, as with most commodity products, the relatively high-volume purchases made by Registered Buyers would result in unit prices that are lower than the unit prices resulting from relatively-low volume purchases made by small loggers and harvesters. Thus, in this regard, the lack of such purchases by small loggers and harvesters makes the NS Survey more, not less, conservative.

n743 See GNS Verification Report, Exhibit NS-VE-6 at 10.

n744 See, e.g, GNS Verification Report at 5 for a discussion of how the GNS defines the term Registered Buyer; see also GNS Primary QNR Response at NS-5 at 1: "it is the policy of Nova Scotia Department of Natural Resources (NSDNR) that its Crown land stumpage rates (i.e., the price to be paid for the right to harvest standing trees on Crown lands) be set so that the price of Crown timber reflects the price negotiated between private parties in a ***competitive*** marketplace. Accordingly, periodic surveys are conducted of Registered Buyers who routinely purchase stumpage from independent private land owners in order to assess pricing negotiated by private parties in a ***competitive*** marketplace."

n745 See GNS Primary QNR Response at NS-5 at 1.

For the above reasons, we continue to find that the data from the NS Survey are reliable. Accordingly, we find that the data in the NS Survey are an appropriate tier-one benchmark to measure the respondent firms' benefits from the provision of stumpage by the various eastern provinces for LTAR.

Comment 42: Whether the Department Should Make Adjustments to the Nova Scotia Benchmark

In the Preliminary Determination, the Department calculated a countervailable benefit to respondents from the provision of stumpage for LTAR in the provinces of Alberta, Ontario, and Quebec using private stumpage survey data based on data from the NS Survey. n746 The Canadian Parties argue that if the Department continues to use the NS Survey as a benchmark for those three provinces, it should make certain adjustments to the benchmark. n747 Specifically, the Canadian Parties argue that the Department should not include the C$3.00 per cubic meter (m3) silviculture fee charge in the benchmark, while the petitioner asserts that the Department should include the full C$3/m3 fee in the benchmark. n748 Additionally, the Canadian Parties argue that the Department should apply more accurate conversion factors to convert the private stumpage NS Survey data from metric tons to cubic meters. n749

n746 See PDM at 42-46.

n747 See Canfor Case Brief at 47-48 and 53-54; see West Fraser Case Brief at 24-25; see Tolko Case Brief at 34; see Petitioner Case Brief at 30-35; Petitioner Rebuttal Brief at 59-60; see GOC Etal Common Issues Case Brief at 5558, 64-66, 69-71, and 73-79, GOA Case Brief at 40-44 and 63-64, GOO Case Brief at 3 and 53, and GOQ Case Brief at 45.

n748 See Canfor Case Brief at 53-54; see GOA Case Brief at 64, GOQ Case Brief at 45; and GBC Case Brief at 12; see JDIL Rebuttal Brief at 2-7. See also Petitioner Rebuttal Brief at 30-35.

n749 See Canfor Case Brief at 48; see West Fraser Case Brief at 24-25 and 29-30; see GOC Etal Common Issues Case Brief at 55-58 and 78-79 and GOA Case Brief at 42-43.

The Canadian Parties also take issue with how the Department indexed the pricing data from the NS Survey. The Canadian Parties argue that the Department's indexing method was unlawful because the indexed prices were not actual transactions and were not even indexed to transactions involving the good in question, but were instead based on an all-commodities index. n750 They further argue that because the commodity index inflator that the Department relied upon was higher in the first quarter of the POI than during the remainder of the year, the Department's indexing method created a stumpage unit price for the first quarter that was higher than the rest of the POI. They claim the disparity stems from seasonal patterns in timber harvesting for which the Department's indexing method fails to account. The Canadian Parties also claim that the Department took seasonal patterns into account in Lumber IV n751 and that the Court has previously instructed the Department to rely on data on the record, rather than indexed data, when such data are available. n752

n750 See the GOC Etal Common Issues Case Brief 63-64.

n751 See GOC Etal Common Issues Case Brief at 64.

n752 See Shenzhen.

Further, the Canadian Parties argue that the Department should revise its method for adjusting the benchmark to account for the share of sawlogs and studwood logs harvested in Nova Scotia during the POI. In particular, they argue the Department's reliance on the studwood/sawlog ratio from Lumber IV is flawed and should be adjusted based on information included in the NS Survey. n753

n753 See GOC Etal Common Issues Case Brief at 66 and GOO Case Brief at 3.

The Canadian Parties also argue that the Department should adjust the benchmark to account for differences in distance from timber stand to mill between provinces, n754 and to account for pulpwood stumpage prices as well as for species variance among the provinces. n755

n754 See Canfor Case Brief at 53-54; see GOA Case Brief at 64, GOQ Case Brief at 45; see GOC Etal Common Issues Rebuttal Brief at 4-11, GOO Rebuttal Brief at 2-3 and GOQ Rebuttal Brief at 12; see JDIL Rebuttal Brief at 2-7.

n755 See Canfor Case Brief at 48; see also West Fraser Case Brief at 25; see also GOC Etal Common Issues Case Brief at 70-71; see also GOA Case Brief at 43-44 and 64; see also GOO Case Brief at 33; see also GOQ Case Brief at 44-45.

The petitioner argues that the Nova Scotia benchmark appropriately uses only sawlogs and studwood, the GNS survey employs a reliable conversion factor, the alleged differences in transportation costs are immaterial to the benchmark, and the Department correctly excluded access, harvesting or hauling cost adjustments from the benchmark because such costs do not reflect log prices. n756

n756 See Petitioner Rebuttal Brief at 12-13.

Department's Position: We agree that the Department must determine the adequacy of remuneration for provincial Crown stumpage "in relation to the prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review." n757 However, notwithstanding parties' arguments to the contrary, we continue to determine that the Nova Scotia benchmark reasonably reflects the "price, quality, availability, marketability, transportation, and other conditions of purchase or sale" for provinces east of British Columbia, and that adjustments to the Nova Scotia benchmark are not warranted to address comparability issues. n758 The overall comparability of this data is discussed in Comment 40 above; the Department will address specific adjustments requested by the parties here.

n757 See section 771(5)(E)(iv) of the Act.

n758 See section 771(5)(E)(iv) of the Act.

At the outset, we agree with the Canadian Parties that the C$3/m3 silviculture fee should not be included in the Nova Scotia benchmark. In this investigation, we are seeking a stumpage-to-stumpage comparison. Because the record reflects that the silviculture fee is not part of the stumpage prices reflected in the benchmark, the Department continues to find that it is appropriate to not include the fee in our benchmark stumpage price. Our approach with regard to silviculture adjustments is also discussed in Comment 43.

We also agree that changes are warranted to the studwood to sawlog ratio in the final determination. In this investigation, we require a combined sawlog and studwood benchmark price. As noted above, Canadian Parties object to the Department's decision in the Preliminary Determination to apply a studwood to sawlog ratio from Lumber IV to the prices in the NS Survey. At the time of the Preliminary Determination, the Department lacked volume data that would permit it to calculate a combined sawlog/studwood unit price that reflected the share of sawable logs in Nova Scotia. Therefore, in the absence of the necessary volume data, we relied on the studwood to sawlog ratio utilized in Lumber IV to create a combined studwood and sawlog unit price. n759 At the GNS verification, officials from the Department noted that the Registry of Buyers report did not break out softwood product volumes by sawlogs and studwood. n760 Upon the request of the verifiers, GNS officials, using the Registry of Buyers report, derived the volume of studwood and sawlogs that were harvested in Nova Scotia during the POI. n761 Additionally, the revised NS Survey data examined at verification contains volume and value data for sawlogs and studwood logs.

n759 See Nova Scotia Benchmark Calculation Memorandum.

n760 See GNS Primary QNR at Exhibit NS-6.

n761 See GNS Verification Report at 3-4 and NS-VE-2 at 20-23.

Having obtained these additional data points, the Department finds it is no longer necessary to rely on the sawlog/studwood ratio from Lumber IV; however, the Department now must determine which of these two data sources obtained since the Preliminary Determination provides the most accurate means of calculating a combined a sawlog and studwood log benchmark. The Canadian Parties urge the Department to use the volume data for each log type from the NS Survey to calculate combined studwood/sawlog benchmark prices. As discussed above, we find that data from the NS Survey to be accurate and reliable. However, for purposes of deriving a combined sawlog/studwood benchmark price, we find it is most accurate to calculate such a price based on a ratio of the overall harvest of sawable logs in Nova Scotia rather than on a surveyed harvest volume, which as discussed above, reflects only a portion of the overall harvest. Therefore, in the final determination, we have calculated a combined studwood/sawlog benchmark using a log ratio obtained from the GNS's Registry of Buyers report, which is reflective of the overall harvest. n762

n762 See GNS Verification Report at 3-4 and NS-VE-2 at 20-23.

We disagree with the parties' remaining proposed adjustments. Initially, as explained in Comment 40, we find that the parties have failed to substantiate their claim that the exclusion of pulpwood prices and the variation in species among the provinces impacts the comparability of the Nova Scotia benchmark. Therefore, there is no basis to make an adjustment for these purported differences, nor have parties proposed a reliable means for the Department to make any such adjustments (even if one were warranted).

Further, for the reasons discussed in Comment 41, we find that the NS Survey relied upon a reasonable method when converting the survey data into a common unit of measure, the method reflected the conversion factor used by the GNS in its ordinary course of business, and the Department verified that Deloitte officials accurately applied its conversion factor method when compiling the results of the NS Survey. The Canadian Parties argue the Department should adjust the NS Survey data using a conversion factor that is partially based on data from Alberta. As explained above, the fact that the GNS relies upon the conversion factor in question as part of its ordinary course of business leads us to conclude that the factor is reliable and certainly more applicable to transactions that occurred in Nova Scotia than the Canadian' Parties' proposed conversion factor, which relies, in part, on data from Alberta.

Finally, we disagree with Canadian Parties' arguments concerning the indexing method the Department applied to the NS Survey data. Because the NS Survey contains data for the period of April l, 2015,to December 31, 2015,for the Preliminary Determination, the Department derived prices for the months of January through March by applying the Monetary Fund's Producer Price Index for those months to the April prices contained in the NS Survey. n763 In other words, in the preliminary calculations, the Department based the indexed prices for the first three months of the POI on stumpage prices paid for private-origin standing timber in Nova Scotia during the month of April 2015, as contained in the NS Survey. n764 Thus, it is inaccurate to claim that the indexed prices are not based on actual prices. In Lumber IV, the Department indexed Nova Scotia prices to the POI. n765 Thus, the Department's decision in the Preliminary Determination to index the stumpage prices in the NS Survey was consistent with its prior practice. Additionally, we find that the Canadian Parties' citation to Shenzhen is not on point. In that case, the record contained contemporaneous pricing data, which rendered reliance on a non contemporaneous data that was indexed to the relevant time period unnecessary. n766 Unlike Shenzhen, the record in this investigation, namely the NS Survey, does not contain pricing data for the January to March time period at issue. Thus, we continue to find that the Department's indexing methodology is appropriate and reasonable.

n763 See Benchmark Calculation Memorandum.

n764 See Final Stumpage Benchmark Calculation Memorandum.

n765 See Lumber IV Final Determination IDM at 6.

n766 See [*Shenzhen, 976 F. Supp. 2d at 1333*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5C0P-3CR1-F04B-W002-00000-00&context=) (finding that indexing was not needed because contemporaneous data were available on the record).

We also disagree with the Canadian Parties' claims that the Department's indexing method is flawed merely because the indexed prices for January through March were higher than the base month of April. The prices for January through March 2015 were higher because the indices for those months are higher than the rest of the POI. Thus, to agree with the Canadian Parties' argument that the indexed prices are flawed requires accepting the erroneous premise that price indices may only increase (and not decrease) over time. Although the Canadian Parties contend that stumpage prices do not follow general trends in commodity prices, because the demand and price of timber is typically lower during the first quarter of a given year, their claims are based on their own characterization of a calculation memorandum that is not on the record and that involved a different record; thus, we have no basis upon which to evaluate their claim and we are discounting their argument on this point.

Accordingly, we are adjusting the Nova Scotia benchmark to reflect the studwood to sawlog ratio derived from the Registry of Buyers report (rather than the Lumber IV ratio used in the Preliminary Determination), but are otherwise not adjusting the Nova Scotia benchmark.

Comment 43: Whether the Department Should Make Adjustments to Stumpage Rates in Alberta, Ontario, Quebec, and New Brunswick

In the Preliminary Determination, the Department excluded from its stumpage benefit analysis certain costs, including purportedly legally obligated costs, related to the respondents' tenure operations in Alberta, New Brunswick, Ontario, and Quebec. n767 The Department preliminarily determined that the company-specific methodology used in this investigation, as opposed to the aggregate method used in Lumber IV, allowed the Department to examine each respondent's specific costs and assess the relationship between each company's tenure arrangements and the stumpage prices paid. In addition, the Department preliminarily determined that these costs are related to the respondents' long-term tenure rights and not to the stumpage prices paid to the Crown.

n767 See PDM at 50-51.

The Canadian parties disagree with the Department's rationale for not including adjustments to account for the respondents' long-term tenure obligations. The Canadian Parties argue that harvesters must fulfill their tenure obligations in order to retain the right to harvest Crown timber; thus there is no distinction between "tenure rights" and the right to harvest timber owned by the Crown. n768 The Canadian Parties also note that the Department granted upward adjustments for costs that tenure holders incurred in performing mandatory activities throughout each of the Department's decisions in Lumber IV, and they argue that the Department has not provided a reasonable explanation for why it has reversed course and not granted tenure adjustments in this investigation. n769

n768 See GOA Case Brief at 40-63; see also GOO Case Brief at 31-35; see also Canfor Case Brief at 11-18; see also JDIL Case Brief at 20-22; see also Resolute Case Brief at 6-11; see also Tolko Case Brief at 18-19 and 21; see also West Fraser Case Brief at 27-30 and 46-47.

n769 See GOA Case Brief at 45 and 56-57; see also GOO Case Brief at 58-60; see also Canfor Case Brief at 10-12; see also JDIL Case Brief at 20-22; see also Tolko Case Brief at 33-38; see also West Fraser Case Brief at 22-30.

The petitioner argues that the Department should not make adjustments for silviculture costs that are estimates of future liabilities, as they are not directly related to the market-based stumpage prices that the respondents paid (e.g.Tolko, Canfor, and West Fraser all record a liability for estimated future silviculture costs). n770 The petitioner argues that adjustments for scaling, waste, and cruising expenses should not be granted because such costs are indirect and not necessary to access standing timber. n771 The petitioner also argues that the Department should not grant adjustments for other indirect forest management costs such as management and planning fees, inventory costs, holding and protection charges, and forest research and development costs as such costs are not directly related to the harvest of timber. n772

n770 See Petitioner Rebuttal Brief at 72-73.

n771 Id. at 74.

n772 Id. at 75-76.

In sum, the petitioner argues that the Canadian Parties' proposed adjustments would not result in a market-derived stumpage price but, instead, "a price based on the wholesale acceptance of their fixed and variable operational costs, regardless of whether such costs are directly related to stumpage prices during the POI or already reflected in the benchmark price." n773 The petitioner asserts that the Department should follow its established practice and allow for an adjustment only if the respondent can demonstrate that the expense was directly related to the market-based stumpage price during the POI. n774

n773 Id. at 69-70; see also Petitioner Case Brief at 27-28.

n774 See Petitioner Rebuttal Brief at 69.

The petitioner argues that the Department should make one adjustment to the Nova Scotia benchmark when calculating the benefit for Resolute's stumpage purchases in Ontario and Quebec. The GOO levies a forest renewal charge as part of its stumpage payments to cover the cost of silviculture n775 and the GOQ sets minimum stumpage prices to ensure that the GOQ receives sufficient revenue to fully cover silviculture costs. n776 Since Crown stumpage rates in Ontario and Quebec incorporate the cost of silviculture, the petitioner argues that the Department should make an adjustment by adding the C$3.00/m3 silviculture fee to the Nova Scotia benchmark when calculating the benefit that Resolute received when harvesting Crown-origin standing timber in Ontario and Quebec. n777 Although JDIL claims that a harvester in Nova Scotia can perform silviculture work that satisfies the Nova Scotia relations for less than C$3.00/m3, the petitioner asserts that JDIL's claim lacks sufficient documentation and does not adequately tie the costs cited to silviculture credits earned. n778

n775 See Petitioner Case Brief at 31-32.

n776 Id. at 31-32.

n777 Id. at 32.

n778 Id. at 33.

Parties' specific comments are summarized below.

The GOC's comments:

Whether the Department Must Account for In-Kind Costs and Other Adjustments

The GOC argues that the fact that this investigation is being conducted on a company-specific bases and not an aggregate basis is an insufficient reason for the Department to depart from its past practice. n779 The Department must continue to recognize, as it did in Lumber IV, that tenure agreements are part of the conditions of sale for stumpage, that tenure holders incur costs that are not directly reflected in stumpage prices, and must make adjustments to account for these additional obligations and expenses. n780

n779 See GOC Etal Common Issues Case Brief at 75.

n780 Id. at 75-76; see also West Fraser Case Brief at 29-30.

The GOA's comments:

Whether the Department Should Make an Adjustment for Holding and Protection Charges and FRIAA Dues

The GOA argues that the Department must account for holding and protection charges, which are required under Section 97.6 of the TMR, in its stumpage LTAR analysis. n781 In addition, the GOA argues that FRIAA dues, which all tenure holders are required to pay under Schedules 3 and 5 of the TMR when commodity prices used to index monthly timber rates exceed certain price thresholds, must be accounted for in the Department's stumpage benefit calculation. n782

n781 See GOA Case Brief at 47-48.

n782 Id.

The petitioner argues that the Department should not make adjustments for these costs as they are not directly related to the harvest of timber. n783

n783 See Petitioner Rebuttal Brief at 75-76.

Whether the Department Improperly Rejected In-Kind Costs

The GOA argues that in-kind costs associated with tenure agreements are directly related to the volume of timber harvested. n784 The GOA argues that tenure holders are rational economic actors; therefore, they factor in all costs associated with harvesting timber on Crown lands in Alberta and only enter into agreements if they are able to recover those costs. If instead the Crown were responsible for silviculture, forest management, road construction, and other costs associated with harvesting timber to the point ofharvest, the costs incurred by the Crown would be embedded in a higher crown stumpage price. n785

n784 See GOA Case Brief at 53.

n785 Id. at 54.

The GOA argues that the Department's Preliminary Determination incorrectly excluded certain up-front payments, such as road construction, from the cost of harvesting Crown timber by arguing that the upfront costs are unrelated to any current stumpage price. n786 The Department attempts to ignore one-time or lump-sum payments made over the course of long-term tenures under the belief that these costs are unrelated to stumpage rates. The Department's benefit calculation is fundamentally inconsistent with the Department's ***regulations*** and prior practice regarding non-recurring subsidies, in which the Department allocates the benefit over the "average useful life" of the asset receiving the benefit. n787 The GOA argues that the Department should include the following in-kind costs to its stumpage benefit calculation: basic reforestation costs; road costs; forest management costs; scaling costs; fire, insect, and disease costs; and environmental protection costs. n788

n786 Id. at 55.

n787 Id. at 55-56.

n788 Id. at 57-63.

The GOO's comments:

Whether Ontario Crown Softwood Timber Destined to Sawmills Was Supplied for "Less Than Adequate Remuneration " During the POI

The GOO argues that stumpage prices reported by the GOO only reflect basic stumpage charges and do not reflect the full cost of the obligations incurred by harvesters of Ontario Crown timber; therefore, in order to make a proper comparison between Crown stumpage and a benchmark of private stumpage purchases, all obligations incurred by harvesters of Crown timber must be accounted for through adjustments. These adjustments include costs associated with road construction and maintenance, forest management planning, fire and insect protection, and consultations with First Nations. n789

n789 See GOO Case Brief at 32-33.

Canfor's comments:

Whether the Department Should Include All of Canfor's Reported Costs In Alberta As Part Of The Crown Stumpage Price Prior To Comparison To The Nova Scotia Benchmark

Canfor argues that excluding the in-kind costs that the company is legally required to pay contravenes the Department's ***regulations*** and its practice in Lumber IV., n790 As a tenure holder in Alberta, Canfor is required to incur the following costs to access Crown timber: (1) Crown dues, (2) FRIP dues, (3) holding and protection fees, (4) road costs, (5) scaling costs, (6) forest management planning costs, (7) forest inventory costs, (8) basic reforestation costs, (9) environmental protection and other ground rule costs, (10) and contributions to the Forest Management Enhancement Fund. Canfor argues that the Department must either include Canfor's actual company costs as part of the Alberta Crown stumpage price or deduct these costs from the benchmark price in order to conduct a proper LTAR analysis that accounts for all prevailing market conditions.

n790 See Canfor Case Brief at 49.

Whether the Department Should Include All Costs That Canfor Incurred in its Alberta Stumpage Calculations

Canfor argues that for the company's purchases of Crown stumpage in Alberta, the Department should rely on Canfor's actual costs and not the MNP aggregate survey data, and the Department should include adjustments to account for FRIP dues, holding and protection fees, road costs (excluding on-bloc roads), scaling costs, forest management planning costs, forest inventory costs, basic reforestation (silviculture) costs, and various environmental protection costs. n791

n791 Id. at 11 and 13.

Whether the Department's Reliance on SC Paper from Canada - Expedited Review is Misplaced

In the SC Paper from Canada - Expedited Review, the silviculture and LMF cost adjustments that were at issue were costs that the GNB paid to the licensee as reimbursement for the licensee carrying out these activities on the government's behalf. The petitioner alleged, and the Department investigated, these reimbursements as a separate program and found the reimbursements for silviculture and activities and LMFs to be countervailable grants. n792 In contrast, Canfor argues that in the current investigation, the company paid these costs and received no reimbursement, and that there is no evidence that Canfor received countervailable grants in connection with any reimbursement of costs incurred. n793

n792 Id. at 14.

n793 Id. at 14-15.

Whether the Department's Laws and ***Regulations*** Require it to Take Into Account All Costs Incurred by the Tenure Holder as Part of the "Prevailing Market Conditions " in Alberta

Canfor argues that the laws require that the adequacy of remuneration be determined in relation to "prevailing market conditions" for the good or service being provided, including "other conditions of purchase or sale." n794 In Lumber IV., the Department included all costs incurred by the tenure holder as part of the administered Crown stumpage price in the case of Alberta, and the Department should continue to follow this methodology in the current investigation. n795

n794 Id. at 9.

n795 Id. at 9-10.

JDIL's comments:

Whether the Department Should Apply an Upward Adjustment for Unreimbursed Land Management Expenses to JDIL's Purchases Under License #7

The facts of this investigation do not support the Department's decision to depart from the precedent established in Lumber IV, in which the Department made adjustments to Crown stumpage rates for unreimbursed land management expenses. n796 The price of softwood timber reported by the GNB only reflects the basic stumpage charge, and excludes other significant obligations incurred by harvesters of Crown timber. The Department should make an upward adjustment for unreimbursed land management expenses to JDIL's purchases under License #7 to account for the cost of silviculture and license management activities that JDIL was required to complete under that license. n797 The Department should make an additional upward adjustment for other unreimbursed expenses which JDIL incurred in areas under License #7 but did not incur with respect to purchases from private woodlots, including fire prevention, land stewardship, maintaining boundary lines, conducting survey, and constructing trails. n798

n796 See JDIL Case Brief at 21.

n797 Id. at 17-18.

n798 Id. at 19.

Resolute's comments:

Whether the Department Should Make Adjustments to Stumpage Prices in Ontario for the Cost of Obligations That Are Not Applicable on Private Lands

Resolute argues that the real cost of Crown stumpage is the final delivered wood costs after accounting for all of the obligations that the Crown imposes for the right to harvest Crown timber. n799 At a minimum, the Department must make adjustments to the stumpage dues Resolute paid the GOO to account for the measurable in-kind costs of road construction and maintenance, forest management planning, forest fire protection, and First Nations relations. n800 The Department should also account for additional costs that Resolute is obligated to incur when harvesting Crown timber in Ontario but that cannot be separately quantified, such as the operations that Resolute must undertake to prepare forest management plans, work schedules and reports according to the CFSA. n801

n799 See Resolute Case Brief at 20-21.

n800 Id. at 20-22.

n801 Id. at 22-24.

Whether the Department Must Make Adjustments for the Legally Required Costs and In-Kind Costs Resolute Incurred to Harvest Crown Timber in Quebec

The Department must account for the legally required fees that Resolute is required to pay the GOQ to hold a TSG and harvest Crown timber, which include the annual royalty, annual fees for fire and insect suppression, and First Nations fees. n802 The Department must also account for the in-kind costs Resolute was required to incur under its TSGs for road construction and maintenance, scaling, and partial cuts to meet environmental obligations imposed by the GOQ. n803

n802 Id. at 26-28 and Attachment A.

n803 Id. at 28-29 and Attachment A.

Whether the Department Must Account for the Cost of Temporary Forest Camps as Part of the Prevailing Market Conditions in Quebec

Quebec's public forests are usually located in remote and less accessible areas in the northern part of the province, as compared to the private forests, which are mostly located along the St. Lawrence River and are generally accessible through major public roads. As such, the remote location requires housing and supporting loggers with temporary forest camps. Although Resolute records these expenses with administrative expenses and cannot segregate them, the Department's benefit analysis should account for the fact that the forest camps are part of the prevailing market conditions present in Quebec's Crown forests but not in Nova Scotia's private forests. n804

n804 Id. at 30-31.

Tolko's comments:

Whether the Department Should Make Adjustments to Capture All Costs Tolko Incurred in Addition to Stumpage in Alberta

Tolko argues that the Department should include all payments made by Tolko, including timber dues, holding and protection charges, and payments resulting from in-kind obligations imposed by the GOA. Tolko argues that the Department did not adequately justify its decision to depart from its practice in Lumber IV and exclude these costs from Tolko's LTAR analysis in the Preliminary Determination. Tolko argues that the Department should include holding and protection charges and FRIAA dues, which are part of the total stumpage dues that the company is required to pay as a condition of its FMA and the FRIR. n805 Tolko also argues that the Department should include Tolko's reported POI timber license amortization expense and other legally imposed expenses for road construction and maintenance, planning, bridge removal and deactivation, forestry administration, silviculture/reforestation, weight scaling, conversion scaling, scale sampling, preparation of forest management plans, harvesting supervision, and other lesser cost activities. n806

n805 See Tolko Case Brief at 36-37.

n806 Id. at 38.

West Fraser's comments:

Whether the Department Should Deduct West Fraser's In-Kind Costs from the Nova Scotia Benchmark Price

West Fraser argues that it is legally obligated to pay in-kind costs to harvest Crown timber in Alberta, and that such costs are not incurred by purchasers of private timber in Nova Scotia. These in-kind costs include amortization of timber tenures; main/secondary road and bridge construction, maintenance, and deactivation costs and admin allocation to main/secondary roads; silviculture costs; sustainable forest management expenses, which are required by West Fraser's forest management plans; holding and protection; and conversion scaling. n807 Because these costs are incurred by purchasers of Crown timber in Alberta but are not incurred by purchasers of private standing timber in Nova Scotia, they are one of the "factors affecting comparability" that the Department must account under its ***regulations***. n808

n807 See West Fraser Case Brief at 25-26.

n808 Id. at 27.

West Fraser argues that the fact that an LTAR analysis is conducted on an aggregate basis or on a company-specific basis has no bearing on whether mandatory costs should be included in the benefit calculation. Moreover, the Department's ***regulations*** do not distinguish between country-wide and company-specific LTAR analyses in requiring that "factors affecting comparability" be considered. n809 West Fraser also argues that there is no legal distinction between "long-term tenure rights" and "stumpage." Pursuant to 771(5)(E) of the Act, the Department must determine the amount of a benefit conferred "to the recipient" (i.e., West Fraser). The in-kind payments that West Fraser pays the GOA as part of its tenure agreements are costs that West Fraser is obligated to pay in exchange for the right to harvest Crown timber. n810

n809 Id. at 28.

n810 Id. at 29.

West Fraser argues that the Department should adhere to its governing statute and the methodology used in Lumber IV by using the TDA private-log-sale transaction data as the benchmark for its Alberta stumpage LTAR analysis. If the Department chooses to use the Nova Scotia benchmark, West Fraser argues that it must use the MNP-calculated weighted-average stumpage price that incorporates lower-quality pulpwood and energy wood, account for the difference between Alberta and Nova Scotia conversion factors, and adjust for Alberta's higher hauling costs, and incorporate West Fraser's in-kind costs. n811

n811 Id. at 8-15 and 29-30.

The petitioner's comments:

Whether the Department Should Grant the Canadian Parties' Request for Cost Adjustments

The Department has countervailed the provision of stumpage for LTAR in five previous proceedings: (1) Certain Softwood Lumber from Canada, (2) Lined Paper from Indonesia, (3) Certain Coated Paper from Indonesia, (4) Coated Free Sheet Paper from Indonesia, and (5) SC Paper from Canada, n812 In the investigation and every review of those proceedings, the Department used a cross-border tier-three benchmark based on log prices. The Department granted adjustments to the cross-border benchmark only if the cost was directly related to the stumpage price during the POI and was reflected in one comparison price but not the other (e.g., harvesting costs for stumpage prices to allow for comparison with harvested log prices). n813 In Coated Free Sheet Paper from Indonesia, the Department explained that costs must be directly related to the stumpage price rather than the benchmark log price:

n812 See Petitioner Rebuttal Brief at 63.

n813 Id.

The Department has found that the GOI provides companies standing timber.

As such, the adequacy of remuneration is to be measured for standing

timber, and therefore, the benchmark should be calculated on a similar

basis… For our analysis, we are deriving a market-based stumpage price;

we are not comparing log prices to log prices. n814

n814 Id. at 63-64.

Similarly, in Uncoated Paper from Indonesia, the Department used cross-border Malaysian prices for acacia logs based on an independent market study as a stumpage benchmark for Indonesian acacia timber. The Department granted an adjustment only for the costs of extraction, or harvesting, because they were directly related to the stumpage price and were reflected in harvested log prices, but not in the stumpage price. The Department did not grant any adjustments for freight because the benchmark was acacia logs at the mill gate. n815

n815 Id. at 64.

The Department found in the SC Paper from Canada - Expedited Review and the Preliminary Determination that adjustments for activities related to "long-term tenure rights" were not directly related to the stumpage price during the POI. The petitioner argues that long-term tenure rights cannot be considered costs directly related to the harvesting and hauling of timber to the sawmill. For costs that were directly necessary to access the standing timber for harvest and hauling to the sawmill, the petitioner argues that the Department properly made an adjustment to the stumpage price to allow for an apples-to-apples comparison with cross-border harvested log prices.

Although the Canadian Parties rely on Lumber IV to support their argument that the Department must include tenure adjustments, the petitioner counters that the Department expressly chose not to use U.S. standing timber prices as a tier-two benchmark in Lumber IF because it would have required making complex adjustments to the available data. n816

n8l6 Id. at 65-66.

The petitioner further notes that the Department relied on costs from an aggregation of companies in Lumber IV, and was therefore unable to individually examine a company's records to determine which cost adjustments were warranted. n817 The petitioner argues that the Department obtained company-specific information for each respondent in this investigation and relied on such information for its determinations, such as not applying an adjustments to BC respondents for profit associated with extraction. n818

n817 Id. at 67.

n818 Id. at 64-65.

The petitioner argues that the Department properly explained its analysis of company-specific data and evidence on the current record and provided a reasoned explanation for its determination that costs associated with long-term tenure activities should not be included as adjustments. The fact that the Canadian Parties disagree with the Department's explanation is not the same as the Canadian Parties' claim that the Department failed to provide a "reasoned explanation." n819

n819 Id. at 68.

Department's Position: Parties have submitted numerous comments regarding proposed adjustments to the stumpage prices paid by respondents in Alberta, Ontario, Quebec, and New Brunswick, as well as proposed adjustments to the Nova Scotia benchmark. Below, we address all arguments summarized above. Since issuing the Preliminary Determination, the Department has verified the questionnaire responses submitted by the respondent companies and the provincial governments. Specifically, the Department has verified the information pertaining to the various agreements granting respondents the right to harvest Crown timber, n820 and the relationship between their harvest agreements and the stumpage prices the respondents paid for Crown standing timber. We have also verified the Nova Scotia private standing timber benchmark and the costs included in the private prices composing the Nova Scotia benchmark.

n820 We examined Cantor's FMAs, CTPs, and CTQs with the GOA; JDIL's FMAs with the GNB; Resolute's TSGs with the GOQ; Resolute's SFLs and FRLs with the GOO; Tolko's FMAs and CTQs with the GOA; and West Fraser's FMAs, CTQs, and CTPs with the GOA.

We first address the respondents' arguments that the Department did not provide a sufficient, reasoned analysis to justify its decision to depart from the methodology applied in Lumber IV regarding cost adjustments. n821 The Canadian Parties propose applying certain adjustments made in calculating the benefit of stumpage for LTAR in Lumber IV. However, the record evidence in this investigation stands on its own, and regardless of whether this investigation is conducted on an aggregate basis or company-specific basis, we rely on the record of this investigation to determine whether any adjustments to the stumpage prices respondents paid or to the Nova Scotia benchmark are warranted.

n821 See GOC Etal Common Issues Case Brief at 71-75; see also GOA Case Brief at 56-57; see also Canfor Case Brief at 17-18; see also Tolko Case Brief at 17-21; see also West Fraser Case Brief at 25-29.

For the purposes of the final determination, when calculating the benefit to respondents from Crown-origin standing timber for LTAR, we compared the stumpage charges invoiced by the Crown at the time of harvest to the Nova Scotia benchmark. Under section 771(5)(E)(iv) of the Act, the Department is required to measure the adequacy of remuneration in relation to the "prevailing market conditions for the good or service being provided." Accordingly, in considering the respondents' arguments for adjustments to their Crown-origin stumpage prices, the Department examined the record with regard to the costs incorporated into the stumpage prices paid by harvesters of standing timber from private landholders in Nova Scotia and the costs respondents incurred to harvest Crown-origin standing timber. As discussed below, we find no evidence that the costs identified by the respondents are incorporated into the prices paid by harvesters of private timber in Nova Scotia, and, thus, we are not making the adjustments as argued by the respondents either to the benchmark or to the respondents' Crown-origin stumpage purchase prices.

The respondents argue that the Department should adjust their purchase prices of Crown-origin stumpage by adding the cost of certain post-harvest activities. We disagree. Accordingly, for the stumpage benefit analysis in this final determination, we did not add such costs to the respondents' Crown-origin stumpage purchase prices. The private prices in the Nova Scotia benchmark are stumpage prices, i.e., prices charged to the purchaser for the right to harvest timber, which therefore do not reflect any post-harvest costs to the private landowner, since those costs are borne by the harvester, not the private landowner. Activities such as scaling and hauling logs to the mill are costs incurred after harvesting standing timber, and after the purchase/sale of stumpage. Because we determine that the Nova Scotia benchmark is a stumpage price that does not reflect post-harvest activities, a proper stumpage-to-stumpage comparison must logically exclude the cost of such activities from the calculation.

The respondents further argue that the Department should adjust their purchase prices of Crown-origin stumpage to add certain administrative costs. However, such costs are considered overhead expenses, which are not directly related to stumpage prices. Moreover, no record evidence reflects that these prices are included in the Nova Scotia benchmark price. Consequently, in order to achieve a comparison between the benchmark and respondents' purchases on the same cost basis, we have not added the cost of administrative costs/overhead expenses to respondents' Crown-origin stumpage purchase prices.

With regard to the respondents' proposal that the Department add certain in-kind costs (e.g., for silviculture, road construction, forest management and planning, etc.) to their Crown-origin stumpage purchase prices, we find that no record evidence supports concluding that in-kind costs associated with harvesting Crown timber are included in the NS Survey private stumpage prices. Thus, to make the comparison between the benchmark and the respondents' purchase price on the same cost basis, we decline to add those in-kind costs to respondents' Crown-origin stumpage purchase prices. In particular, with regard to silviculture, record evidence demonstrates that the GNS charges registered buyers a C$3.00/m3 to cover the cost of silviculture, or, in the alternative, registered buyers may elect to perform their own silviculture activities rather than pay the fee. n822 Regardless of how the registered buyer chooses to pay for silviculture, however, the cost is in addition to, and thus separate from, the registered buyer's purchase of stumpage. We find no record evidence to support that silviculture costs are included in the NS Survey stumpage purchase prices. Accordingly, to make the proper comparison between the benchmark and respondents' purchases on the same cost basis, we decline to add silviculture costs to the price of the respondents' purchases of Crown-origin stumpage in the other eastern provinces.

In a similar vein, the petitioner proposes adding the C$3.00/m3 silviculture fee to the Nova Scotia benchmark when calculating the benefit Resolute received for Crown stumpage purchases in Ontario or Quebec, alleging that silviculture costs are incorporated by those provincial governments into the provincial stumpage purchase prices. As discussed in Comment 42, we have not included the fee in our calculation of the Nova Scotia benchmark. We find no evidence to confirm that the so-called silviculture costs included in the stumpage rates charged by Ontario and Quebec are actual silviculture expenditures as such or are market-based costs. While a fee for silviculture is included in the stumpage rates charged by the GOO in the form of the forest renewal charge, this fee is set based on forecasted, not actual, silviculture costs. n823 We verified the GOO's total receipts of funds for silviculture in FY 2015-16 and noted in the verification report that the total reimbursements exceeded revenue during that period. n824 Furthermore, under the GOQ's new public forest regime, harvesters are no longer responsible for silviculture activities and instead silviculture is conducted by Rexforet, a wholly-owned subsidiary of Investment Quebec. n825 While the GOQ takes into consideration the cost of silviculture when setting the minimum price for stumpage rates in all auctions and pricing zones, no parties have submitted information regarding how silviculture costs are estimated or how Rexforet accounts for its silviculture revenue and expenditures. n826 Thus, we have insufficient evidence to determine whether the GOQ estimates silviculture costs based on market rates or whether the silviculture costs factored into the minimum price fully cover Rexforet's silviculture expenditures. Accordingly, we decline to add the C$3.00/m3 fee to the Nova Scotia benchmark, because doing so could result in a comparison between the benchmark and the purchases on an unequal cost basis.

n823 See GOO Primary QNR Response at 79-80.

n824 See GOO Verification Report at 11 and VE-6.

n825 See GOQ Primary QNR Response at 116.

n826 Id. at 97 and 118.

We also find no record evidence that the NS Survey benchmark incorporates the cost of long-term tenure obligations (e.g., annual fees, FRIAA dues, holding and protection charges, etc., which the respondents argue we should adjust for in the benefit calculation). Indeed, some parties acknowledge that these costs are not included in the Nova Scotia benchmark. n827 As discussed above, we determine that the Nova Scotia benchmark is a "pure" stumpage price that reflects solely the costs buyers incurred for the right to harvest individual trees. n828 Moreover, parties have provided no evidence that the stumpage rates set by the provincial governments are adjusted to account for the revenue from any fees or charges required under long-term tenure agreements. Accordingly, for this final determination, to conduct a proper stumpage-to-stumpage comparison, we have not added the cost incurred under any long-term tenure obligations to the respondents' Crown-origin stumpage purchase prices, regardless of whether the long-term tenure obligation cost was obligated or legally-required. n829

n827 See, e.g., West Fraser Case Brief at 29.

n828 See GNS Verification Report at 6-7.

n829 See, e.g., Petition, Volume III at Exhibit 133, which contains a copy of the GONS Private Stumpage Survey.

Certain Canadian parties argue that, as a legal matter, we cannot distinguish between "long-term tenure rights" and "stumpage." n830 To support this argument, the parties rely on Lumber IV and section 771(5)(E) of the Act, arguing that in measuring the benefit that each respondent received from its purchase of standing timber, the Department must include all costs incurred by the respondent (including legally obligated costs associated with long-term tenure rights) in exchange for its right to harvest Crown timber. We disagree that we cannot legally distinguish between "long-term tenure rights" and "stumpage." Costs associated with long-term tenure rights are billed on separate invoices or as separate line items by the provinces, rather than incorporated into the stumpage price, n831 and, as discussed above, there is no evidence on the record that these costs are taken into account by provincial governments when setting stumpage prices. Although the parties rely on section 771(5)(E) of the Act, that section does not require the Department to include all costs that a purchaser bears in relation to the purchase of a good when measuring the adequacy of remuneration for that purchase. As discussed above, our benchmark excludes these long-term tenure costs, and as such, including these costs would distort the calculation of benefit by adding costs on one side of the equation (respondents' purchase price) without similar costs being incorporated into the other side (the Nova Scotia benchmark).

n830 See, e.g., Canfor Case Brief at 11-18, Tolko Case Brief at 19-21; West Fraser Case Brief at 28-29.

n831 See, e.g., Resolute Primary QNR Response at Exhibits RESB-23 and RESB-24; West Fraser Primary QNR Response at Exhibit WF-ALB ST-7.

In sum, we find that all of the adjustments requested by Canfor, JDIL, Tolko, Resolute, and West Fraser fall into the categories described above, and, thus, we are not including their proposed adjustments to the purchase prices of Crown-origin stumpage in Alberta, New Brunswick, Ontario, or Quebec. Similarly, as discussed above and in Comment 42, we are not adjusting the Nova Scotia benchmark to include the C$3.00/m3 silviculture fee for comparison to stumpage prices in any province. Thus, for Canfor's, Tolko's, and West Fraser's purchases of standing Crown timber in Alberta, we compared the timber dues n832 each respondent paid to the AMAF, without adjustments, to the Nova Scotia benchmark. For Resolute's purchases of standing Crown timber in Ontario, we compared Resolute's Crown-origin stumpage purchase price (comprising a minimum charge, a residual value charge, a forest renewal charge, and a forestry futures charge), as invoiced by the MNRF, without adjustments, to the Nova Scotia benchmark. For Resolute's purchases of standing Crown timber in Quebec, we compared the stumpage Resolute paid to the MFFP, without adjustments, to the Nova Scotia benchmark. Finally, for JDIL's purchases of standing Crown timber in New Brunswick, we compared JDIL's net payment for stumpage paid to the NBDNR, without adjustments.

n832 The GOA refers to stumpage as "timber dues." See GOA Primary QNR Response at 19.

Comment 44: Whether the Log Export Restraint in British Columbia Restrains Log Exports

The GOC/GBC, Canfor, Tolko, and West Fraser argue that even if the log export permitting process could be considered a financial contribution, the record shows that this process does not restrain exports of logs. n833 Specifically, they argue that the approval process is fast-moving, virtually all requests to export logs during the POI were approved, substantial quantities of logs are exported, the in-lieu of manufacturing fee for log exports from the interior (where the mandatory respondents are located) is insignificant, a significant number of export authorizations are never used, and export premia are normal features of log markets in the absence of export restrictions. The petitioner rebuts that the record demonstrates that the log export permitting process does, in fact, restrain exports. n834

n833 See GBC Case Brief Log Exports at 9-19; see also Canfor Case Brief at 36-37; see also Tolko Case Brief at 31; see also West Fraser Case Brief at 52.

n834 See Petitioner Rebuttal Brief at 98-101.

Department's Position: The Department disagrees with the GOC/GBC, Canfor, Tolko, and West Fraser, and continues to find that the log export permitting process does restrain exports from British Columbia. As an initial matter, by law, unless provided a specific exemption to export, logs in British Columbia are by default not allowed to be exported from the province. As detailed in the Preliminary Determination, in order to receive an exemption to export, potential exports are subject to numerous obstacles, including surplus tests, in-lieu of manufacturing fees, and a potentially lengthy process. n835 We continue to find that these obstacles, when considered in their totality, restrain log exports from the province. Further, we find record information indicates that a "blocking" system operates in the province, discussed further below, which creates an environment in which log sellers are forced into informal agreements that lower export volumes and domestic prices. n836 As such, record evidence shows these impediments lower the prices of logs sold in the province, n837 and in-turn, limits the ability of log harvesters to enter into long-term agreements with foreign purchasers.

n835 See PDM at 58-63.

n836 See Petitioner Comments - Primary QNR Responses at Exhibits 11, 12, 13, and 32.

n837 Id. at Exhibit Hat page 11 ("The net effect of LERs is to push down B.C. domestic prices."); see also Petition at Exhibit 244 ("Although log exports are allowed, the export process is in many cases complex and potentially unduly costly for log owners and producers. Due to these restrictions, logs sell for substantially less on the domestic market than when exported".)

Under the "blocking" system, processors in the province will block a harvester's export application in order to force the harvester to provide logs to the processor at low prices. To export their logs from the province, most exporters in British Columbia are required to first offer their logs to processors in the province. n838 As such, most potential exports are subject to this blocking process. As explained in the Canada Institute at the Wilson Center's report "From Log Export Restrictions to a Market-Based Future: Towards an Enduring Canada-U.S. Softwood Agreement", n839 the processors in the province will make a bid on the logs offered for sale, effectively blocking the harvester from exporting their logs, n840 for the sole purpose of negotiating concessions from the exporter. Once an informal agreement is reached, in which the processor receives logs at discounted prices, the processor will agree not to block the log exports. n841 In other words, the domestic processor agrees to lift the block on certain exports of logs in return for favorable terms on the sales of other logs. Further, the report indicates that this practice is wide spread throughout the province. n842 As a result of this blocking process, harvest operators are frequently forced to sell a portion of their logs to processors in British Columbia at or below the cost of production in order to be able to export their remaining logs. n843

n838 Specifically, for logs under provincial jurisdiction, most logs exported from BC are done under the surplus test (see GBC Primary QNR Response, Part 1 at LEP-20-21) which are generally approved through Ministerial Orders or through OICs. The record indicates that the majority of these surplus test exports under provincial jurisdiction are done through Ministerial Orders. In order to export through a Ministerial Order, a company that submits an application to export must first offer its logs to processors in the province, via a bi-weekly advertising list. Finally, logs under federal jurisdiction are under subject to the export test which also require the potential exporter to first offer the logs to processors in British Columbia. See GBC Primary QNR Response, Part 1 at LEP-10.

n839 See Petitioner Comments - Primary QNR Responses at Exhibit 11.

n840 Id. at 8 ("British Columbia's timber processors have the ability to stop exports by objecting to the granting of export licenses for B.C. logs. Under the regime, a processor merely has to make an offer on an export application in order to bring the process to a halt; hence the application is blocked.").

n841 Id. ("They negotiate informal supply arrangements at discounted prices with key B.C. log processors in exchange for their agreement not to block exports.").

n842 Id. at 9 ("Almost every timber harvester has negotiated side agreements to keep its exports from being blocked").

n843 Id. at 8 ("some harvest operations are forced to sell logs at or below their cost of production to the domestic processors. In other words, the net effect of B.C. policy is to force timber harvesters to make next to nothing (or worse) on the domestic side of their business in order to safeguard their profitable export operations.").

The existence of this "blocking process" is corroborated by record evidence that a log exporter in British Columbia has been subject to this process. n844 Specifically, these documents detail how the company has been forced to negotiate agreements with domestic processors in which they sell logs below market rates to prevent their requests for exports from being blocked n845 and that the GBC is aware of this process. n846

n844 Id. At Exhibits 12, 13, and 32.

n845 Id. at Exhibit 12 ("The practice of "log blocking' refers to the process used by a domestic purchaser to gain concessions from the potential log exporter in exchange for a withdrawal of its bids for logs. A blocker is not required to purchase the logs which were the subject of its bid. The concessions range from lower prices to different private log sorts, and result in a loss to the potential log exporter… Merrill & Ring regularly receives such blocking letters and must negotiate agreements whereby the domestic processor agrees to lift blocks on certain private logs in return for the sale of other private log sorts."); see also id. at Exhibit 32 ("Merrill's applications are only granted because Merrill has been forced to pre-arrange or negotiate agreements with domestic processors in order to prevent its export product from being blocked. Therefore, by the time the GOC receives a log export application, Merrill has already suffered a loss because it has been forced to sell additional logs at below market prices to a domestic processor in order to prevent the domestic processor from blocking their application.").

n846 Id. at Exhibit 12 ("FTEAC's administration of the Federal Surplus Test knowingly permits such "log blocking.'"); see also id. at Exhibit 13 ("The ability to target log producers is crucial in enabling log processors to engage in the illicit practice of "blockmailing" … Despite the fact that TEAC/FTEAC is aware of the practice of targeting, it has never adopted any procedures or protocols to address this problem.").

In its case brief, the GOC/GBC argue that their log export processes do not actually restrain exports because: (1) virtually all requests to export logs are approved; (2) substantial quantities of logs are exported from the province; (3) the export approval process is fast moving; (4) the in-Lieu-of-Fee-of-Manufacturing fees are not meaningful obstacles to log export activities; (5) a significant number of export authorizations are never utilized; (6) the Export and Import Permits Act (EIPA) is irrelevant to the log export process; and (7) export premia are normal features of log markets. n847 However, we find these arguments to be unpersuasive.

n847 See GBC Case Brief Log Exports at 9-19. In their respective briefs, the mandatory respondents located in British Columbia endorsed the GBC's arguments regarding the log exporting process. See Canfor Case Brief at 36; see also Tolko Case Brief at 31; see also West Fraser Case Brief at 52.

First, as noted above, the GOC/GBC have argued that virtually all log export requests are approved, substantial quantities of logs are exported from British Columbia, and that a significant number of export authorizations are never utilized. As an initial matter, while we do not disagree with their characterization of these facts, we find that none of these facts demonstrate that exports are not restrained. Specifically, the claim that some volume of logs were exported, or that not all authorizations were utilized does not demonstrate that the process does not restrain exports. There is no way to know how many more logs would be exported in the absence of this process. Further, as discussed above, the "blocking" system in place indicates that due to these informal arrangements the fact that most export requests are approved is not a reliable indication of how the market is impacted by the existence of the log export restraints. n848

n848 See Petitioner Comments - Primary QNR Responses at Exhibit llat9 ("In 2002, Canada told the World Trade Organization that it granted 97% of applications to export from Crown land in British Columbia. This is hardly surprising. Almost every timber harvester has negotiated side agreements to keep its exports from being blocked. If not, this number would have been substantially lower… Because blocking agreements between harvesters and processors are informal, one may never know precisely, but it is certainly much less than 97%.").

Second, the GOC/GBC argue that the in-Lieu-of-Manufacturing fees that BC log exporters are required to pay do not pose a meaningful obstacle to log export activities. Specifically, the GOC/GBC assert that these fees apply to log exports under provincial jurisdiction only, and not to exports under federal jurisdiction. Further, the GOC/GBC argue that all log exports from the BC interior are subject to a C/m3 fee. Because the mandatory respondents operate only in the BC interior, the GOC/GBC argue that the Department cannot find that the in-Lieu-of-Fee-of-Manufacturing fees impede log exports to a meaningful degree in this investigation. We disagree with respondents' assertions regarding the in-Lieu-of-Fee-of-Manufacturing fees. First, approximately 58 percent of the logs exported from the province during the POI were under provincial jurisdiction, and thus subject to the in-Lieu-of-Fee-of-Manufacturing fees. n849 As such, we find that the majority of exported logs are subject to these fees. Further, we find that these fees can be significant, and can substantially increase the final price a potential customer would have to pay for the logs. n850

n849 See GBC Primary QNR Response, Part 1 at LEP-8.

n850 Specifically, these fees can be as much as 15 percent, and in some instances, subject to an additional multiplication factor between 1.1 and 1.3 of the fee. See, e.g., GBC Primary QNR Response at LEP-34-35.

We also disagree with the significance that the GOC/GBC attribute to the fact that the fees for the interior of the province, where the mandatory respondents are located, are less than the fees from the coastal region of British Columbia. Although the fees for logs harvested from the interior are lower in comparison to the BC coast, we find the fact that any fee is required at all to be significant. These fees increase the cost of exporting, as compared to producing domestically, and represent another impediment (along with the "blocking" system, approval process, etc.) to export logs from British Columbia.

Third, in response to the Department's preliminary finding that the process for obtaining export permits was lengthy n851, the GBC argues that the Department's rationale is flawed. Specifically, the GBC argues that the record shows the entire process is frequently concluded in as little as two and a half weeks. However, the fact that an application for an export permit must be filed at all introduces an additional burden on log sellers seeking to export, and the fact that the permit is not automatically approved renders exporting uncertain. This restriction, along with others identified above, hinders the free export of logs and discourages log sellers from considering all market options and seeking the highest price for their logs.

n851 See PDM at 54 ("In SC Paper from Canada-Expedited Review, the Department found that the process to apply for and receive an export permit under a Ministerial Order can take between seven and thirteen weeks. There is no indication on the record of this investigation that the timing of the approval process for Ministerial Orders has changed between the POR of the SC Paper from Canada-Expedited Review (2014) and this POI.").

Fourth, the GBC states that the Department's reliance on EIPA in the Preliminary Determination was misplaced. In the Preliminary Determination, the Department found that all logs exported from Canada require an export permit under the EIPA, as all logs are included in the export control list and that that export violations are punishable under section 19of the EIPA. n852 Therefore, through the combination of the surplus test and the legal penalties for exporting without a permit, we found the GOC entrusted and directed private log suppliers to provide logs to mill operators. Citing Article 3(l)(a) of the EIPA, n853 which discusses ensuring militarily sensitive items are not exported, the GBC infers that the penalty provisions of EIPA were intended to apply to militarily sensitive items and not to logs. Further, the GOC/GBC state that there is no evidence that penalties have ever been applied to exporters of logs. While the GOC/GBC are correct that there is no information on the record that the penalty provisions under the EIPA have ever been applied to exporters of logs, this does not change the fact that these penalty provisions apply to exports of logs in the same manner as exports of other goods in the export control list. Further, in citing to Article 3(l)(a) of the EIPA, the GOC/GBC have implied that the EIPA only pertains to military sensitive matters. However, in addition to section (a), Article 3(1) lists five other types of goods that it deems necessary to control, including Article 3(l)(b) which is to promote further manufacturing in Canada of a natural resource. n854 Finally, the GOC/GBC have not provided any record information that indicates that violators of log exports are subject to different penalties under the EIPA than violators of other goods. As such, we continue to find that the EIPA, and the corresponding penalties for violators under the EIPA, are relevant to our analysis.

n852 Id. at 60-61.

n853 See GBC Primary QNR Response at Exhibit LEP-5 ("to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada").

n854 Id. ("to ensure that any action taken to promote the further processing in Canada of a natural resource that is produced in Canada is not rendered ineffective by reason of the unrestricted exportation of that natural resource").

Finally, the GOC/GBC argue that export premia are a normal feature of log markets and that such price difference does not reveal anything about the impact of the log export process. To support this assertion, the GOC/GBC cite to the Kalt Report. n855 As an initial matter, this report was commissioned by the GOC/GBC for the purposes of this investigation, n856 and as such, there is a concern that the data and conclusions were tailored to generate a desired result. This concern is particularly relevant for this issue. In order to demonstrate that an export premia exist in log markets in general, the report notes differences in domestic and export log prices in only three self-selected markets (New Zealand, Chile, and the US PNW). n857 Further, in its case brief, the GOC/GBC note these prices demonstrate a "consistent existence of an export premium." n858 The Department finds that the absence of any evidence regarding how this sample was selected, and its focus on only three self-selected markets, prevents us from evaluating the validity of the Kalt Report's conclusions. Additionally, a review of the underlying data presented in the Kalt Report contradicts the GOC/GBC's assertion of a consistent export premium. Specifically, each market includes instances where the domestic price is higher than the export price. n859 Given that these self-selected markets show instances where the domestic price is higher than the export price, the Department finds that the record does not support the assertion that export premia are a normal feature oflog markets.

n855 See GBC Primary QNR Response at Exhibit LEP-1.

n856 Id. ("I have been asked by the Government of British Columbia ("GBC') and the Government of Canada ("GOC') to address and assess the economics relating to certain claims and assertions made by the Committee Overseeing Action for Lumber International Trade Investigations or Negotiations (the "Petitioner'. These claims relate to… and the operation of the log export permitting process in BC.").

n857 Id. at 51-55.

n858 See GBC Case Brief Log Exports at 18-19.

n859 See GBC Primary QNR Response at Exhibit LEP-1 at figures 22 (New Zealand), 23 (Chile) and 24 (US PNW).

Moreover, assuming arguendo, that export premia exist in log markets, this does not overcome the record evidence that indicates that the export process suppresses prices throughout British Columbia. n860 Further, the existence of an export premia does not explain why domestic prices in British Columbia are consistently lower than the same type of log in the United States. n861

n860 See, e.g., Petition at Exhibit 252 (an editorial by Brian Frank, the former CEO of Timber West, the largest landowning company in British Columbia, in which he states that the domestic log prices are artificially depressed); see also See Petitioner Comments - Primary QNR Responses at Exhibit Hat page 12 ("The net effect of LERs is to push down B.C. domestic prices").

n861 Id. ("British Columbia domestic prices are consistently below U.S. and world market prices..........over the past five years the average pricing differential between the U.S. and the B.C. product was 27%. In other words, B.C. logs sold at an average discount of 27% relative to their U.S. counterpart over the past five years."); see also Petition at 128-130 and Exhibit 108.

Comment 45: Whether Log Export Restraints Impact the British Columbia Interior

In the Preliminary Determination, we addressed parties' arguments that log export restraints would not impact sawmills located in the interior of British Columbia, because such sawmills would source their logs in markets from which it would not be economically feasible for logs to be exported. We found that the log export restraints in British Columbia applied throughout the province, and to the extent their impact was only felt directly on coastal areas, this effect would "ripple" through to the interior of British Columbia. n862

n862 See PDM at 58.

The GOC/GBC, Canfor, West Fraser and Tolko argue that the Department's preliminary findings were contradicted by the record. In particular, they argue that even if the log export process impeded log exports from British Columbia, the process would not impact the interior of the province where the mandatory respondents are located because (1) log prices do not ripple from the coast to the interior; (2) it is uneconomic to export logs from much of the interior; and (3) the record contradicts the finding that dead pine logs can be exported from the BC interior. n863 The petitioner argues that the Department correctly found that the log export process impacts prices throughout all of British Columbia, including the interior. n864

n863 See GBC Case Brief Log Exports at 19-25; see also Canfor Case Brief at 37; see also Tolko Case Brief at 31; see also West Fraser Case Brief at 52-53.

n864 See Petitioner Rebuttal Brief at 92-97.

Department's Position: In the Preliminary Determination, we found that the log export restraints provided a financial contribution to companies operating in the interior of British Columbia, on the basis that: (1) the laws and ***regulations*** pertaining to the exportation of logs from British Columbia (whether under federal or provincial jurisdiction) are applied throughout the entire province, and thus impact all of British Columbia; (2) even if the log process only directly impacted logs from coastal regions, the restrictions on exports of those logs would influence the overall supply of logs available to domestic users, which would have a ripple effect on the volume and prices of logs throughout the entire province, including the interior of British Columbia; (3) logs from the interior can be exported economically; (4) logs from the interior are in fact exported to the United States; and (5) while technically located within the provincial interior, many of the mandatory respondents' mills are located near the BC border or near where logs are exported.

For the same reasons discussed in the Preliminary Determination., we continue to find that the log export restraints impact the entirety of the province, including the BC interior. As an initial matter, no parties dispute that the laws and ***regulations*** pertaining to the exportation of logs from British Columbia apply throughout the entire province. And as discussed in further detail below, we continue to find that the record evidence supports our preliminary determination that the log export process has a ripple effect from the BC coast to the BC interior. Further, we continue to find that many of the mandatory respondents' mills are located near the BC border or near where logs are exported. n865 Additionally, we find that logs from the interior are exported to the United States n866 and that logs (including low-value logs) from the interior can be exported economically.

n865 See, e.g., GOC Etal Primary QNR Response at LEP-6 (indicating that Canfor has a sawmill close to the US/Canadian border and West Fraser has a sawmill close to areas with high export permit volume).

n866 Id. at Exhibits LEP-30 (Sample Ministerial Order Exemption: Southern Interior) and LEP-31 (Sample Ministerial Order Exemption: Tidewater Interior).

With regard to the GOC/GBC's argument that log prices do not ripple from the coast to the interior, and that any price impacts of the log export restraints would be felt only on the coast, the GOC/GBC make three assertions. First, they argue that logs do not follow the "law of one price." Second, they state that the species of logs from the BC coast are different than the logs form the BC interior. Finally, they assert that BC coast and interior are distinct regions of the province, with limited transportation options connecting the two regions.

With respect to this first issue, the GOC/GBC argue that record evidence establishes that logs do not follow the "law of one price" (i.e., logs of the same species and grade will have the same price at all locations). n867 Specifically, the GOC/GBC cite the Kalt Report and Learner Report as for the proposition that log markets are inherently localized such that log prices would not equalize across different markets. n868 Therefore, the GOC/GBC contend that the Department's "ripple effect" theory is unsubstantiated. We disagree. As an initial matter, the Kalt and Learner Reports were commissioned by the GBC for the purposes of this investigation and as such, carry only limited weight given their potential for bias and data and conclusions that were tailored to generate a desired result. Further, the record of this investigation includes numerous other independent reports, not commissioned for the purposes of this investigation, that indicate that log markets covering large areas (intersected by international borders) can be integrated. n869 In other words, these independent reports directly contradict the conclusion drawn by the GOC/GBC's experts in self-commissioned studies regarding the extent to which log markets are localized. Specifically, the results of these reports identify areas where there is significant integration in a timber market over large areas covering multiplejurisdictions n870 and instances where logs are following the "law of one price." n871 As additional support for the proposition that log markets are not inherently local, we note that data submitted by the GOQ and GNB indicate that logs harvested in Quebec and New Brunswick are traded between other provinces and even with the United States. n872 The GNB itself has made statements that indicate that the log market in New Brunswick is integrated with the surrounding region. n873 As such, we find that there is conflicting evidence about the nature of log markets. In weighing this conflicting evidence, we find that it is reasonable to accord greater weight to the numerous, independent reports and other information on the record of this investigation that contradict the findings of the Kalt and Learner Reports that were commissioned specifically for purposes of this investigation.

n867 See, e.g., GBC Primary QNR Response Part 1 at Exhibit BC-S-184 (Learner Report) at page 5.

n868 Id. ("Timber, of course, is a strictly local product, and most milling is local as well in the sense that most logs processed by mills come from nearby stands of timber. The local nature of this activity, high transportation costs, and other factors have precluded the building of the arbitrage infrastructure that could keep the prices of logs the same everywhere."); see also GOC Primary QNR Response Part 1 at Exhibit LEP-1 (Kalt Report) at page 79 ("[w]hile mills will ***compete*** with other mills within their timbershed for timber and logs, and with more distant mills at the margins of their timbersheds, such ***competition*** will not result in an equalization of log prices, even abstracting away from differences in log quality.").

n869 See Petitioner Comments - Primary QNR Responses at Exhibit 3 ("Spatial Integration in the Nordic Timber Market: Long-run Equilibria and Short-run Dynamics"), Exhibit 4 ("Roundwood Market Integration in Finland: A Multivariate Cointegration Analysis"), Exhibit 5 ("Timber Price Dynamics Following a Natural Catastrophe") and Exhibit 8 ("Transmission of price changes in sawnwood and sawlog markets of the new and old EU member countries").

n870 Id. at Exhibit 3 ("This study presents an econometric analysis of the spatial integration or the Nordic timber market as reflected in timber prices… .[w]hen the results were interpreted… the Nordic markets were found to be strongly integrated… Finland, and to some extent Sweden, were found to act as "price-leaders" in the long run and Denmark and Norway were very sensitive to changes in timber prices in ***competing*** countries."); see also id. at Exhibit 8 ("In conclusion, overall developments in both sawnwood and sawlog prices in the four countries showed convergence in the study period, which indicates that deepening integration is taking place in European forest sector.").

n871 Id. at Exhibit 4 ("For pine sawlogs, the likelihood ratio test for strict price proportionality in cointegration vectors was not rejected, which indicates that in the long- run even the strong law of one price holds between the regions.").

n872 See, e.g., GOQ Primary QNR Response at Exhibit QC-STUMP-4 (Table 7); see also GNB Primary QNR Response at GNB STUMP-1 (Table 3), showing a significant amount of volume of logs sourced from the USA or other Canadian provinces; see also id at pages NBII-12 and 15, showing significant exports of private and Crown harvested logs from New Brunswick.

n873 Id. ("the market in New Brunswick is viewed within the context of a broader Maritime market and not in isolation.").

The GOC/GBC next argue that any "ripple effect" would be confined to coastal species, which differ from the predominant interior species. While the Department does not dispute that the logs in the BC coast and interior are not identical in their species composition, the record shows that the logs harvested in the two regions are interchangeable, and thus a government action (such as an export restraint) that directly impacted one type of log species would impact the market for other log species in the province. The record shows that both the coast and interior had significant volumes of balsam, cedar, fir and hemlock. n874 Thus, even if the log export restraints only directly impacted coastal balsam, cedar, fir and hemlock, the restrictions on exporting these logs would influence the overall volume (and in-turn the price) of such logs throughout the province. Further, as recognized by the GOC/GBC, lodgepole pine is the dominant species in the interior. n875 Record information provided by the GBC shows that lodgepole pine falls within the SPF group of products, n876 and that the hemlock and fir species (which had significant harvest volumes on the coast during the POI) n877 are substitutable for SPF. n878 Further, the record indicates that all three types of species are used to produce similar products, including lumber. n879 As such, a restraint on either coastal hemlock or coastal fir would impact not only the supply of interior hemlock and fir supply, but also the availability of other interchangeable log species, including lodgepole pine. As such, we disagree with the GOC/GBC's contention that that the differences in log species between the coast and interior mean that a restriction on coastal logs would be irrelevant to the interior.

n874 See, e.g., GBC Primary QNR Response Part 1 at Exhibit BC-S-2. There were 1,516,498 m3 of balsam, 3,170,139 m3 of cedar, 4,871,426 m3 of hemlock harvested from the coast during the POI. During the POI, there were 24,488,870 m3 ofbalsam, 3,170,139 m3 of cedar, 4,871,426 m3 of hemlock harvested from the coast.

n875 See GBC Case Brief Log Exports at 21.

n876 See GBC Primary QNR Response Part 1 at BC 1-58 ("Lodgepole is the principal pine species in the SPF group of products.").

n877 See, e.g., GBC Primary QNR Response Part 1 at Exhibit BC-S-2.

n878 Id. at Exhibit BC-S-183 at page 4 ("Spruce-Pine-fir (SPF) lumber from BC is substitutable by other species. [i]nland and Coastal Hem Fir are the closest in properties and likely to be the initial products of choice.").

n879 For example, western hemlock, Douglas-fir and lodgepole can both be used for lumber for general construction. Id. at BC 1-58 to 63.

Finally, in arguing that the record does not support the Department's finding of a "ripple effect," the GOC/GBC state that there are limited transportation corridors between the coast and interior of British Columbia. Further they assert that interior mills have no overland transportation linkages to the coast. In light of our finding that log markets are integrated, the existence or absence of transportation corridors between the BC interior and the BC coast does not impact our finding that log prices are suppressed throughout the province. Moreover, we find that record information contradicts the GOC/GBC's position. First, we note that Map 1 provided in the GOC's original questionnaire response for the log export restraints, shows that the tidewater interior is connected directly with the coast with no apparent mountain range separating the two areas. n880 Further, the GBC has indicated that logs from the tidewater interior can easily be transported to ports located in the coastal region. n881 The GOC/GBC have not argued that the log market in the tidewater portion of the interior is a separate market unique from the rest of the interior. Further, Map 2 of the GOC's original questionnaire response for the log export restraints shows that there are at least seven highways that cross between the BC coast and BC interior, and that mandatory respondents have mills along these highways. n882 Based on the foregoing, we continue to find support for the proposition that log prices in coastal BC have a ripple effect on the entire province, including throughout the interior.

n880 See GOC Etal Primary QNR Response at LEP-4.

n881 Id.

n882 Id. at LEP-6.

We likewise continue to find that the log export restraints directly impact the interior region of BC'regardless of any ripple effect from the coast to the interior'because logs can be and are exported from the interior of British Columbia. In this regard, we disagree with the GOC/GBC that the record establishes that it is not economically feasible to export logs from much of the interior. First, for this argument, the GOC/GBC rely upon the Kalt Report and Bustard Report, which were commissioned specifically for purposes of this investigation. n883 As such, these reports carry limited weight given their potential for bias and conclusions that were tailored to generate a desired result. Furthermore, this finding is contradicted by other record evidence that logs from different parts of the interior are exported. n884 These exports account for a significant amount of the total exports from the entire province. n885 As such given that there are substantial exports from various sections of the interior, it is feasible to export logs from the interior. While these exports may predominantly originate from a different area of the interior, record evidence reflects that the vast majority of mills in the interior overlap with one another and with potential export markets, n886 and the impact on the border regions of the interior would have a similar "ripple effect" on the BC interior.

n883 See GOC Primary QNR Response Part 1 at Exhibits LEP-1 (Kalt Report) and LEP-2 (Bustard Report).

n884 Specifically, the record demonstrates that there are significant exports of logs from the tidewater interior and southern interior. Further, record information shows that there were some requests to export BC logs to Alberta during the POI. See GOA Primary QNR Response Part 1 at Exhibit AB-S-3, Table 3. While this data does not detail the source or destination of these logs, given the GBC's argument that the transportation costs limit how far the logs can be transported, it is reasonable to presume that the logs were coming from the eastern portion of the BC Interior.

n885 See, e.g., GOC Primary QNR Response Part 1 at page LEP-5, which shows that exports from the Tidewater Interior account for approximately eight percent of total exports from the entire province and exports from the Southern Interior account for approximately two percent of total exports from the entire province.

n886 See Petitioner Comments - Primary QNR Responses at Exhibit 19. In this exhibit, the petitioner provided a map, in which a 100-mile radius is drawn around the sawmills in the BC interior, which demonstrates that the BC interior sawmills all overlap with each other. We note that this figure is consistent with the findings of the GOC/GBC's own expert, as the Bustard Report states that "[i]n most Interior areas it is economically feasible to truck export logs for up to about a 7-hour return cycle from harvest sites. This represents approximately a 228 km (142 mile) each way."). See GOC Primary QNR Response Part 1 at Exhibit LEP-2 at 10. As such, we find that the 100-mile radius used by petitioner is a conservative estimate to the degree in which BC interior sawmills all overlap with each other.

Finally, the GOC/GBC argue that record evidence demonstrates that it is not economic to export MPB-damaged logs from the BC interior. This argument is in response to the Department's finding in the Preliminary Determination that logs can be economically exported from the interior, n887 in which the Department relied on information from the "Mountain Pine Beetle Alternative Business and Market Options" report. n888 That report indicated that MPB infected logs could be economically exported from British Columbia. n889 In its case brief, the GOC/GBC argue that the Department ignored contradictory evidence in reaching this finding.

n887 See PDM at 58.

n888 See Petitioner Comments - Primary QNR Responses at Exhibit 21 ("Mountain Pine Beetle Alternative Business and Market Options: Phase II Final Report").

n889 Id. ("The above table illustrates that only two markets outside of BC, the U.S. Pacific Northwest and China, have a realistic market potential for MPB grey attacked timber.").

As an initial matter, as the preceding analysis demonstrates, our finding that log export restraints impact the entire province does not depend on whether MPB damaged logs can be exported economically. Nonetheless, we continue to find that our preliminary finding that MPB killed logs can be exported from the BC Interior was supported by a reasonable reading of the record. First, the record information upon which the GOC/GBC rely is a "rebuttal" report commissioned for the purposes of this investigation n890 and as such, the results of this report carry only limited weight given its potential for bias and conclusions that were tailored to generate a desired result. By contrast, the report that the Department relied upon to support its finding was commissioned (not for the purposes of this investigation) for Forestry Innovation Investment Ltd n891 a GBC agency, and we consider its data and conclusions to be more reliable on that basis. n892 This report investigated alternative options for timber affected by the MPB epidemic, n893 which impacted the interior of the province. Further, the information used in this report was gathered from extensive interviews with companies and organizations involved in utilizing MPB damaged logs, n894 including the three mandatory respondents with BC operations in this investigation. n895 This report indicates that the processors interviewed for the report were opposed to allowing exports of MPB damaged logs, thus, indicating that these logs can be exported. n896 Finally, the Department's finding was not that damaged logs were actually exported, but that these logs may be exported. Thus, the Department's finding that it is was feasible for MPB-infected logs to be exported was reasonable.

n890 See GOC Etal Comments Rebuttal to Petitioner Primary QNR Response Comments at Exhibit GOC/GBC-2.

n891 See Petitioner Comments - Primary QNR Responses at Exhibit 21at cover page.

n892 See, e.g., GBC Primary QNR Response Part 1 at page BC 1-28 ("In 2003, the Government of British Columbia established Forestry Innovation Investment ("FII') to work with industry and the federal government to help maintain, create, and diversity markets for all B.C. forestry products.").

n893 See e.g. petitioner Comments - Primary QNR Responses at Exhibit 21at 1.

n894 Id. at 7.

n895 Id. at 43-44.

n896 Id. at 39 ("From all indications, exports of grade #3 logs would likely be strongly opposed by industry. Industry is uncertain over the future availability of #3 grade and expects that this log grade will make up an increasing portion of their timber supply. Industry representatives indicated that any constraint to accessing log grade #3 would have negative impacts on the existing dimension lumber industry (which is the cornerstone of their business)").

Therefore, for these reasons, we continue to find that the log export restraints impact the entire province, including the BC interior. As such, we continue to find that the log export restraints constituted a countervailable subsidy in this investigation.

Comment 46: Whether the Log Export Restraints in British Columbia is a Financial Contribution

In the Preliminary Determination, we found that the GBC log export process provides a financial contribution by means of entrustment or direction of private entities, pursuant to section 771(5)(B)(iii) of the Act, because official governmental action compels suppliers of British Columbia logs to supply to consumers in the province, including mill operators, and that it constituted a provision of a good or service, in this instance the provision of logs, in accordance with section 771(5)(D)(iii) of the Act. n897

n897 See PDM at 60.

The GBC, Canfor, West Fraser and Tolko argue that the log export process is merely an administrative process through which exporters obtain authorization to export. n898 Specifically, they argue that export permitting process is not a financial contribution, as it is not a direct government provision of goods, nor does not it fall within entrustment and direction. The petitioner argues that the Department correctly found that the log export process in British Columbia is a financial contribution. n899

n898 See GBC Case Brief Log Exports at 3-9; see also Canfor Case Brief at 36; see also Tolko Case Brief at31; see also West Fraser Case Brief at 50-51.

n899 See Petitioner Rebuttal Brief at 87-92.

Department's Position: Logs harvested in British Columbia fall under either federal or provincial jurisdiction. Exports of logs under provincial jurisdiction are regulated under the Forest Act. n900 Exports of logs under federal jurisdiction are regulated under Federal Notice to Exporters No. 102. n901 The Forest Act stipulates that timber harvested in British Columbia, from land under provincial jurisdiction must be: (a) used in British Columbia; (b) or manufactured within the province into a wood product. n902 However, the Forest Act allows for limited exemptions to the general prohibition on the export of logs. Generally, there are three exemptions:

n900 See GBC Primary QNR Response, Part 1 at Exhibit LEP-8.

n901 Id. at Exhibit LEP-4.

n902 Id. at Exhibit LEP-8, Part 10.

(1) logs that are "surplus to requirements of timber processing facilities in British Columbia" (surplus criterion);

(2) timber that "cannot be processed economically in the vicinity of the land on which it is cut or produced, and cannot be transported economically to a processing facility located elsewhere in British Columbia" (economic criterion); and

(3) where an exemption "would prevent the waste of or improve the utilization of timber cut from Crown land" (utilization criterion). n903

n903 Id. at LEP-16.

During the POI, all but two of the approved applications for export were made under the surplus test. Under this surplus test, the GBC requires all log suppliers to first offer logs to BC mill operators before they can be exported. Exemptions under the surplus test are generally approved through Ministerial Orders or through an individual OIC or a blanket OIC. n904 Under a Ministerial Order, a company submits an application, and the logs covered by the application are listed in a bi-weekly advertising list, n905 notifying British Columbia mill operators of the availability of the logs. If no bid is received for that listing, then the listing is considered surplus, and a Ministerial Order is granted. n906 If an application receives an offer, the offer will then be evaluated by the TEAC to determine whether it represents a fair market value. n907 TEAC members include government officials and log market experts, some of whom are active buyers and sellers of logs. n908 For the coastal region, the TEAC relies on pricing data from the VLM to evaluate whether an offer represents fair market value. The TEAC makes a recommendation to the GBC regarding whether the price offered is fair. If the offer is determined not to be fair, i.e., below "market prices" as considered by the Committee, then the listing is determined to be surplus to the needs of BC manufacturers, and a Ministerial Order is granted, and the logs will be permitted for export. If an offer is deemed to be fair, the application for an export exemption is rejected. The seller in this instance may choose not to sell the logs to the bidder, but it may not resubmit an application to export the same logs.

n904 Id. at LEP-16-18.

n905 Id. at LEP-17.

n906 Id.

n907 Id.

n908 Id. at LEP-46.

In certain scenarios, exporters of logs can also apply for an exemption through either an individual OIC or a blanket OIC. Individual OICs allow applicants to receive exemptions for timber that is still standing, and they are also used for applicants with large export volumes (15,000 cubic meters). n909 The GBC did not issue any individual OICs during the POI. Under a blanket OIC, the GBC permits a certain volume of logs from a given area to be exported without the application of the surplus test for each individual volume of logs exported. A blanket OIC applies to a specific region. During the POI, there were five blanket OICs in effect, covering specific areas in the Coastal region.

n909 Id. at LEP-17.

Further, exports of logs under provincial jurisdiction in British Columbia are subject to fees "in-lieu of manufacturing." n910 These fees range between C$1 per cubic meter to approximately 15 percent of the value of the specific log. The fees vary based on the location, species, and grade of the log. Further, in certain coastal areas, the "fee in lieu" is subject to an additional multiplication factor between 1.1 and 1.3 of the fee. n911

n910 Id. at LEP-34-35

n911 Id.

Exports of logs under federal jurisdiction are subject to an almost identical process to the Ministerial Order surplus test described above for logs under provincial jurisdiction. Logs harvested under the provincial and federal jurisdiction in British Columbia, and all exports of logs throughout Canada, require an export permit under the EIPA because logs of all species are included on the Export Control List. n912 Companies submit an application to the Export Controls Division of the DFATD, which then has the GBC list these logs on the same bi-weekly advertising list discussed above. n913 If an offer is received, the offer is reviewed by the FTEAC. The FTEAC makes a recommendation to DFATD regarding whether the logs are surplus and should be granted an export permit. Violations of EIPA are punishable by the penalties described in section 19of the EIPA. n914

n912 Id. at LEP-8.

n913 Id. at LEP-11-12.

n914 Id. at Exhibit LEP-5.

As noted above, in the Preliminary Determination, we found that log export process was a financial contribution by means of entrustment or direction of private entities, pursuant to section 771(5)(B)(iii) of the Act, and that it constituted a provision of a good or service, in accordance with section 771(5)(D)(iii) of the Act. n915

n915 See PDM at 60.

In the Preliminary Determination, we found a long history of the government managing the forest in British Columbia, as well as restricting log exports. Specifically, the GBC has had the right to manage the forest in the province since 1867, and the GBC has managed the majority of the land in the province for more than 100 years. n916 Further, we found that export restrictions have been in place for logs under provincial jurisdiction since 1891, and for logs under federal jurisdiction since 1940. n917 As such, we preliminarily found that the provision of logs, which satisfies the definition of a financial contribution under section 771(5)(D)(iii) of the Act, would normally be vested inthe government, and that the provision does not differ substantively from the normal practices of the government. n918

n916 Id. at 61.

n917 Id.

n918 Id.

Further, we determined that GBC's requirements for export, combined with both the lengthy process for obtaining an exception, and the fees charged by the GBC upon export, result in a policy where the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act, and to provide a financial contribution of logs, in accordance with section 771(5)(D)(iii) of the Act. n919 With respect to the GOC, we preliminarily determined that the GOC has entrusted and directed private log suppliers to provide logs to mill operators insofar as the surplus test and the legal penalties for exporting logs without an export permit compel such suppliers to divert to mill operators logs that could otherwise be exported. Therefore, we found that the GOC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of 771(5)(B)(iii) of the Act, and to provide a financial contribution of the provision of logs, in accordance with section 771(5)(D)(iii) of the Act. n920

n919 Id.

n920 Id.

As an initial matter, there are no new facts that were placed on the record following the Preliminary Determination regarding the manner in which the log export process operates. Further, as discussed below, we disagree with the arguments made by GOC/GBC, Canfor, West Fraser and Tolko that the log export process does not provides a financial contribution.

First, citing to CFS from Indonesia, the GOC/GBC argue that the Department has distinguished between bans and partial restraints. Specifically, they argue that in CFS from Indonesia, the Department determined that the export policy in place in Indonesia was a complete ban and, therefore, was countervailable. According to the GOC/GBC, the export permitting process cannot be characterized as a ban, and thus the "impact" of CFS from Indonesia, cannot be carried over to the facts in this investigation.

As an initial matter, we agree that there is not a "ban" on exports of logs from British Columbia, in the same manner that the Department found that logs from Indonesia could not be exported. However, we do not agree with the respondents' characterization of CFS from Indonesia. While the Department did compare the export restraints in Indonesia to other types of export restraints (export quotas, export duties, and certification requirements) in CFS from Indonesia, in concluding that the complete ban in Indonesia is countervailable, the Department did not state that only an export ban is countervailable or that export restraints are not countervailable.

Moreover, in CFS from Indonesia, the Government of lndonesia's (GOI's) stated purpose for the log export ban was "to reduce environmental degradation and to manage the forest in a sustainable manner." n921 The Department, therefore, evaluated the record information, including three independent studies provided by the GOI, to determine whether there was a financial contribution. n922 The GOI's submitted studies did not corroborate the GOI's assertion, however, and the Department found the log export ban program to provide a financial contribution because the record evidence demonstrated that the supply of logs at suppressed prices benefited the pulp and paper industry. n923

n921 See CFS from Indonesia IDM at 27.

n922 Id. at 29-32.

n923 Id.

In this investigation, the program under investigation is a process that prohibits the export of logs without an export permit, and an export permitting process that authorizes the export of logs, in accordance with specified criteria. Thus, as in CFS from Indonesia., our analysis focused on this process, and the information submitted by the GOC and GBC. Based on our analysis of this information, we find that the program provides a financial contribution. As such, despite the claim that the export permitting processes "does not direct the harvest or owner to provide logs to any purchaser in particular", n924 we have determined based on the available record evidence that the program is designed to benefit, and in operation it does benefit, downstream consumers similar to the analysis in CFS in Indonesia.

n924 See GBC Case Brief Log Exports at 9.

Further, parties argue that the exporting process does not fall within any of the four statutory categories of financial contribution defined under the Act. Under section 771(5)(B)(iii) of the Act, a subsidy is bestowed when an authority entrusts or directs a private entity to make a financial contribution, if providing the financial contribution would normally be vested in the government and the practice does not differ in substance from the practices normally followed by governments. Under section 771(5)(D) of the Act, the term "financial contribution" means (i) the direct transfer of funds; (ii) foregoing or not collecting revenue that is otherwise due; (iii) providing goods or services; or (iv) purchasing goods. Therefore, if an authority entrusts or directs a private entity to either (i) provide a direct transfer of funds such as a loan; (ii) forego revenue; (iii) provide a good or a service; or (iv) to purchase a good, then under section 771(5)(B)(iii) of the Act, a financial contribution has been made.

The SAA provides explicit guidance regarding circumstances in which the Department will find that a private party has been entrusted or directed and therefore provided made a financial contribution within the meaning of section 771(5)(B)(iii) of the Act. The SAA states:

In the past, the Department… has countervailed a variety of programs

where the government has provided a benefit through private parties.

(See, e.g., Certain Softwood Lumber Products from Canada, Leather from

Argentina, Lamb from New Zealand, Oil Country Tubular Goods from Korea,

Carbon Steel Wire Rod from Spain, and Certain Steel Products from Korea).

The specific manner in which the government acted through the private

party to provide the benefit varied widely in the above cases. Commerce

has found a countervailable subsidy to exist where the government took or

imposed (through statutory, regulatory or administrative action) a

formal, enforceable measure which directly led to a discernible benefit

being provided to the industry under investigation.

In cases where the government acts through a private party, such as in

Certain Softwood Lumber Products from Canada and Leather from Argentina

(which involved export restraints that led directly to a discernible

lowering of input costs), the Administration intends that the law

continue to be administered on a case-bycase basis consistent with the

preceding paragraph. n925

n925 See SAA at 926 (emphasis added).

Thus, there may be a number of ways in which an authority can act through a private party to provide a financial contribution. The SAA also establishes that the circumstances by which the government acts through a private party can vary widely, and that Commerce must examine these circumstances, and the relevant evidence, on a case-by-case basis. The SAA also states that the "entrusts or directs" standard must be interpreted broadly. n926

n926 Id.

Timber harvesters and processors in British Columbia are limited, by the provincial or federal restrictions on the export of logs to which they are subject, in to whom they can sell their logs. These limitations result in the third-party timber harvesters and processors providing logs to BC processors of logs at the entrustment or direction of the GBC and the GOC. We continue to find that this provision of logs falls within the definition of a financial contribution under section 771(5)(D)(iii) of the Act because the provision of logs is the provision of a good or service, other than general infrastructure.

Information on the record shows that these third-party timber harvesters are private companies. Because the timber harvesters are private companies, in order for their provision of logs to potentially give rise to a countervailable subsidy, the Department must consider two factors under section 771(5)(D)(iii) of the Act: whether an authority entrusted or directed the timber harvesters to make a financial contribution to our respondent companies, and whether the provision of this financial contribution (provision of logs) would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments.

To analyze whether the timber harvesters have been entrusted or directed to provide a financial contribution within the meaning of section 771(5)(D)(iii) of the Act, we considered the laws and ***regulations*** that govern the provision of logs within British Columbia. As detailed above, the lengthy and burdensome export prohibition exemption process discourages log suppliers from considering the opportunities that may exist in the export market by significantly encumbering their ability to export, especially where there may be uncertainty about whether their logs will be found to be surplus to the requirements of mills in BC. Moreover, this process restricts the ability of log suppliers to enter into long-term supply contracts with foreign purchasers.

The legal obligations described above do not exist in some other markets. In de-regulated or totally open markets, sellers can choose to sell their products whenever and to whomever it makes economic sense to do so. Timber harvesters can choose to sell logs wherever it makes economic sense to do so and they can approach buyers while the timber is still standing. However, as noted above, timber harvesters in British Columbia must ensure that demand for logs in British Columbia is met before seeking a purchaser overseas and, therefore, they are forced to receive a lower price for their timber in British Columbia than they would if they were able to export free of the GBC and GOC export restrictions.

Therefore, the legal requirements that logs remain in British Columbia combined with the process for obtaining an exception from those requirements to export, result in a policy where the GOC and GBC have entrusted or directed timber harvesters to provide logs to producers in British Columbia. Specifically, with respect to the GBC, we continue to find that the legal requirements, combined with both the lengthy process for obtaining an exception, and the fees charged by the GBC upon export, result in a policy where the GBC has entrusted or directed private log suppliers to provide logs to mill operators within the meaning of section 771(5)(B)(iii) of the Act. With respect to the GOC, we continue to find that the GOC has also entrusted and directed private log suppliers to provide logs to mill operators, within the meaning of 771(5)(B)(iii) of the Act, insofar as the surplus test and the legal penalties for exporting logs without an export permit compel such suppliers to divert to mill operators some volume of logs that could otherwise be exported.

Finally, as discussed above, in the Preliminary Determination, we found that there is a long history of government management of the forest in British Columbia. Further, we found that export restrictions have long been in place for logs under provincial jurisdiction and federal jurisdiction. There is no new record information that would cause to reconsider this finding. Therefore, we continue to find there is a 150-year history of the government managing the forest in British Columbia, and a 125-plus year history of the government restricting log exports. Thus, the history of the timber market and the ownership of timber land by the Crown in British Columbia that the provision of logs, which satisfies the definition of financial contribution under section 771(5)(D)(iii) of the Act, would normally be vested in the government, and that the provision does not differ substantively from the normal practices of the government.

In their case briefs, the GOC/GBC and West Fraser challenge aspects of the Department's entrustment or direction finding. In particular, they argue that the Department's finding that the GOC and GBC have entrusted or directed timber harvesters to provide logs to producers in British Columbia is inconsistent with the Department's prior practice in DRAMS from Korea and with certain WTO reports. The GOC/GBC and West Fraser also assert that the Department has failed to establish that the financial contribution "would normally be vested in the government" pursuant to section 771(5)(B)(iii) of the Act, because the alleged financial contribution is the provision of logs and not standing timber or the restraint of exports. However, we find these arguments unpersuasive.

First, we disagree that WTO panel decisions are relevant in this investigation. The Department's determination here is governed by U.S. law. U.S. law is consistent with the United States' international obligations, and, for reasons discussed above, the Department has acted in accordance with U.S. law.

Second, DRAMS from Korea does not stand for the proposition that the Department has found that entrustment or direction can only occur where the government has "affirmatively" given responsibility to a private entity to carry out what might otherwise be a governmental subsidy function. In that case, the Department did not define the boundaries of what could be considered entrustment or direction; moreover, the SAA explicitly provides that any analysis of entrustment or direction must proceed on a "case-by-case basis." n927 Furthermore, as stated in the SAA, the entrustment or direction can be done by a government statutory, regulatory or administrative action as in the case of the investigated log ban at issue in this investigation. Indeed, the SAA explicitly cites to the countervailability of very log export restraint program in Certain Softwood Lumber Products from Canada that is subject to investigation in this instant case.

n927 See SAA at 926.

Third, we have explained how the provision of logs would normally be vested in the government, given the extensive history of government management of forests in British Columbia and of government restrictions on exports of logs from the province. Although West Fraser argues that the government's control over the right to harvest Crown standing timber fails to establish that the provision of logs has been normally vested in the government, logs are harvested from standing timber in forests. And in British Columbia, over 94 percent of the forest is owned by the GBC. n928 Therefore, we continue to find that the financial contribution would normally be vested in the government.

n928 See PDM at 20.

Comment 47: Whether the Constructed Benchmark for Log Export Restraints in the Preliminary Determination was Correct

To calculate a benefit for log export restraints in British Columbia in the Preliminary Determination, the Department constructed tier-two, or world market price, benchmarks to match the logs purchased by mandatory respondents in British Columbia. n929 These benchmarks were based on monthly delivered prices of logs in Washington, because we found that the tree species in the U.S. PNW are comparable to those in British Columbia, and that logs from Washington would be available to purchasers in British Columbia. Additionally, we included international freight charges in these monthly benchmark prices to ensure that both the BC purchases and the benchmark prices are on a "delivered" basis, as required byl9 CFR 351.511(a)(2)(iv). n930

n929 See PDM at 62-63.

n930 Id.

The GOC/GBC, Canfor, West Fraser and Tolko argue that the benchmark used by the Department in the Preliminary Determination is incorrect. n931 Specifically, they state that Department's use of a second-tier benchmark (world market prices), using Washington state delivered log prices is unreasonable and inflates the alleged benefit. Further, they argue that the log transportation cost adjustment based on lumber transport is not consistent with the economic reality of the lumber industry. The petitioner argues that the Department properly included international freight charges in the Preliminary Determination and should continue to do so for this final determination. n932

n931 See GBC Case Brief Log Exports at 26-29; see also Canfor Case Brief at 37-38; see also Tolko Case Brief at 3132; see also West Fraser Case Brief at 53-55.

n932 See Petitioner Rebuttal Brief at 101-109.

Department's Position: The Department continues to find that the application of a tier-two benchmark methodology in calculating a benefit for this program is consistent with its ***regulations***. Specifically, 19 CFR 351.511(a)(2) sets forth the basis for identifying benchmarks to determine whether a government good or service is provided for less than adequate remuneration. These potential benchmarks are listed in hierarchical order by preference:

(1) market prices from actual transactions within the country under investigation;

(2) world market prices that would be available to purchasers in the country under investigation; or

(3) an assessment of whether the government price is consistent with market principles.

Thus, our preference in selecting a potential benchmark, i.e., using a tier-one benchmark, would be to use actual purchase prices within Canada because such prices would generally reflect most closely the commercial environment of the purchaser under investigation. n933 However, as discussed above in Comment 18, we continue to find that the stumpage market in BC is distorted. The demand and value of logs in the BC market is linked with demand and value of stumpage in BC, as supply and value of the logs available in the market are derived from the stumpage market in the province. For these reasons, we continue to find that prices of BC-sourced logs as well as the prices of imported logs cannot be used as tier-one benchmarks to measure the adequacy of remuneration.

n933 See CVD Preamble, [*63 FR at 65377.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

The Department's next preference, under 19 CFR 351.511(a)(2)(ii), is a tier-two world market price. Respondents have argued that world market prices are not "available" to producers in the BC interior because log markets are localized and it is not economic to export logs from the PNW to the BC interior. As an initial matter, 19 CFR 351.511(a)(2)(ii) requires only that the world market price be available to "purchasers in the country in question," and does not require a specific demonstration that the mandatory respondents in particular would have made these world market purchases. n934 Moreover, for reasons discussed in detail in Comments 44 and 45, we find that logs from the BC interior can be and are exported. Because logs can be and are exported from the BC interior, they can also be imported to the BC interior; as such, we find that world market prices are "available" to sawmills throughout BC, including the interior. Thus, the reliance on a tier-two benchmark is appropriate.

n934 See, e.g., Beijing Tianhai at 1374 ("When constructing a tier-two benchmark, the reference to "a firm' does not mean the respondent. Rather, it refers to a hypothetical firm located in the PRC purchasing steel tube during the POI. This is why the Department is directed, when calculating tier-two benchmarks, to determine "price[s that] would be available to purchasers in the country in question.'" (internal citations omitted)).

Because the Department determines that it is appropriate to use a tier-two benchmark, we must adjust the benchmark as required by law. n935 Specifically, pursuant tol9 CFR 351.511(a)(2)(iv), world market prices must be adjusted to include delivery charges and import duties, to arrive at a delivered price "to reflect the price that a firm actually paid or would pay if it imported the product." Moreover, pursuant to section 771(5)(E) of the Act, the adequacy of remuneration shall be determined in relation to prevailing market conditions, including transportation. Thus, the Department's standard practice is to include in benchmarks international freight charges to reflect the delivered price of an imported good, as was done for log prices in SC Paper from Canada - Expedited Review n936 and Coated Paper from Indonesia. n937

n935 See Essar Steel Ltd. at 1268, 1274 ("Essar further argues that Commerce and the trial court erred by adding freight and import costs to the world market price. Both the statute and the ***regulation***, however, require that these costs be added to the benchmark prices. . .. Commerce's decision to add these charges to the benchmark prices is consistent with the relevant statute and ***regulation*** and is supported by substantial evidence." (internal citations omitted)).

n936 See SC Paper from Canada - Expedited Review IDM at Comment 17.

n937 See Coated Paper from Indonesia IDM at Comment 12.

Therefore, the Department properly relied on the international freight costs for shipping lumber from BC to customers in US PNW in making an adjustment for delivery charges pursuant tol9 CFR 351.511(a)(2)(iv), because these are the only transportation costs available on the record. The respondents' arguments that they would not actually pay these international freight charges are not relevant. Whether or not the respondent companies actually imported the input in question and paid international freight is not relevant for purposes of determining an appropriate benchmark, because the proper focus under 19 CFR 351.511(a)(2)(iv) is on the price a firm (not necessarily the respondent) would pay. n938 Furthermore, although the GOC/GBC argue that the transportation costs are too high, the GOC/GBC do not propose alternative cost data; as stated above, we have relied on the only information available on the record in making our adjustment.

n938 See Beijing Tianhai at 1374.

Although GOC/GBC cite Borusan for the principle that the Department must consider the economic reality of the BC interior in making adjustments under 19 CFR 351.511(a)(2)(iv), we disagree that the CIT's holding is relevant here. As set forth above, the Department's ***regulations*** and the statute require that the Department make an adjustment for delivery charges. Because the Department relied on the only available information on the record, the question here is not whether a different source would more reasonably reflect the respondents' actual experience. n939 In arguing against the freight costs used by the Department in the Preliminary Determination, with no alternative available on the record, the GOC/GBC essentially proposes the wholescale rejection of any adjustment for delivery charges; this proposal conflicts with our statutory and regulatory obligations and we have not adopted it here.

n939 See Borusan at 1340-41.

Finally, the GOC/GBC argue that should the Department continue to apply a cross-border benchmark, it should compare the US log prices on a delivered basis in the United States with the respondents' all-in delivered log costs. However, this methodology would conflict with 19 CFR 351.511(a)(2)(iv), which stipulates that world market prices must be adjusted "to reflect the price that a firm actually paid or would pay if it imported the product."

Comment 48: Whether Electricity Is a Service and Therefore Whether the Purchase of Electricity by BC Hydro Is a Financial Contribution

Tolko argues that electricity is a service because it is not tangible, and Congress intended that government purchases of services could not give rise to a financial contribution. Therefore, Tolko argues that the purchase of electricity is not a financial contribution under section 771(5)(E)(iv) of the Act, and is thus, not countervailable. n940 The petitioner states that the Department has previously determined that electricity is a good; therefore, the purchase of electricity does constitute a financial contribution under the Act. n941

n940 See Tolko Case Brief at 51-52.

n941 See Petitioner Rebuttal Brief at 161-163.

Department's Position: As an initial matter, Tolko supports this argument with a hyperlink to a website that is not on our record. n942 Because this is not record evidence, we have not relied upon it. Regardless, the Department in prior cases has determined that electricity is a good. For example, in Hot-Rolled Steel from Thailand, the Department found that electricity is not a service but is a good that is bought and sold in the marketplace. n943 In Reinforcing Bar from Turkey, the Department also stated that electricity is a good. n944 Therefore, the Department in prior CVD cases has determined that electricity is a good, and Tolko has provided no basis for deviating from that prior finding. Accordingly, we continue to find that the purchase of electricity by the government-owned BC Hydro constitutes a financial contribution under section 771(5)(E)(iv) of the Act.

n942 See, e.g., Pasta from Italy 2012 AR and the accompanying IDM at 5-6. ("In the Post-Preliminary Analysis, we noted that a hyperlink to a website, as the GOI submitted in the GOI 5SQR, is not an acceptable response to our questions because a mere citation to a hyperlink does not constitute the provision of information on the record of a proceeding, because information accessible via a hyperlink is subject to change.")

n943 See Hot-Rolled Steel from Thailand IDM at Comment 10.

n944 See Reinforcing Bar from Turkey IDM at 25.

Tolko also argues that the "turndown" payments it receives should be considered a service rather than as a good; however, we note that, in addition to finding electricity a good in the cases cited above, the respondent has provided no legal justification for this argument. As noted by Tolko, these payments are used to compensate Tolko for its investment in fixed generation assets that relate to its sales of electricity to BC Hydro; therefore, these payments would qualify as a financial contribution under 771(5)(D) of the Act. We have also previously found these types of programs to provide a financial contribution in both CRS from Korea and HRS in Korea. n945

n945 See CRS from Korea IDM at 22-24; and HRS from Korea IDM at 21-23.

Comment 49: Whether BC Hydro's Purchase of Electricity Is Tied to Electricity

Tolko argues that the Department erred in attributing a benefit to softwood lumber under the Purchase of Electricity MTAR program because any benefit from BC Hydro's purchase of electricity is tied to Tolko's sales of electricity. Tolko further argues that even if electricity were regarded as an input product, the exception under 19 CFR 351.525(b)(5)(2) would not apply because none of the purportedly subsidized electricity purchased by BC Hydro can be used to produce softwood lumber. n946 The GBC makes the same arguments. n947 The petitioner argues that subsidies that benefit the production of electricity should be attributed over the recipients' overall sales pursuant to 19 CFR 351.525(b)(5)(2) because electricity is an input to both subject and non-subject merchandise, regardless of whether the company actually uses the subsidized input in its production. n948

n946 See Tolko Case Brief at 53-54.

n947 See GBC Case Brief at 92-93.

n948 See Petitioner Rebuttal Brief at 134-135.

Department's Position: The respondents' argument that benefits from an electricity subsidy program are tied to electricity reflect a misunderstanding of the CVD law. If as Tolko argues, a subsidy provided to the sale of electricity is tied to electricity, then electricity subsidies would escape the remedies provided under the CVD law. Under the premise of the respondents' argument, the Department would be unable to countervail such programs as electricity subsidies, water subsidies, and land subsidies because the benefits from these programs would only benefit electricity, water, or land. This argument is at odds with 30 years of case precedent with respect to electricity alone. See, for example, Fresh Cut Flowers From Mexico; n949 Cold-Rolled Carbon Steel Flat-Rolled Products From Korea; n950 Certain Textile Mill Products and Apparel from Singapore; n951 Carbon Steel Wire Rod from Saudi Arabia; n952 Steel Wire Nails From New Zealand; n953 Ball Bearing From Thailand; n954 Magnesium From Canada; n955 Extruded Rubber Thread From Malaysia; n956 Certain Steel Products From Korea; n957 Oil Country Tubular Goods From Argentina; n958 Steel Wire Rod From Trinidad and Tobago; n959 Steel Wire Rod from Venezuela; n960 Cut-to-Length Carbon-Quality Steel Plate from Indonesia; n961 Low Enriched Uranium From France; n962 Hot-Rolled Carbon Steel Flat Products From Thailand: n963 Kitchen Racks from the People's Republic of China; n964 Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman; n965 Shrimp from Ecuador; n966 Melamine From Trinidad and Tobago; n967 Welded Line Pipe From the Republic of Korea, n968 Chlorinated Isocyanurates from the People's Republic of China; n969 and Cut-To-Length Plate From the Republic of Korea. n970

n949 See Fresh Cut Flowers from Mexico, [*49 FR 15007, 15009.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SD5-TGW0-001D-03JP-00000-00&context=)

n950 See Cold-Rolled Carbon Steel Flat-Rolled Products from Korea, [*49 FR 47284, 47292.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDB-2210-001T-92C4-00000-00&context=)

n951 See Certain Textile Mill Products and Apparel from Singapore, [*50 FR 9840, 9842.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDB-1H10-001T-9205-00000-00&context=)

n952 See Carbon Steel Wire Rod from Saudi Arabia, *51 FR 4206, 4211.*

n953 See Steel Wire Nails from New Zealand, [*52 FR 37196, 37198.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDR-XS40-001J-X54X-00000-00&context=)

n954 See Ball Bearing from Thailand, [*54 FR 19130, 19133.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDR-TKP0-001J-X4T4-00000-00&context=)

n955 See Magnesium from Canada, *57 FR 30946, 30949.*

n956 See Extruded Rubber Thread from Malaysia, [*57 FR 38472, 38474.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SG3-MHD0-005D-W3RR-00000-00&context=)

n957 See Certain Steel Products from Korea, [*58 FR 37338, 37350.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SHH-RGF0-006W-93RC-00000-00&context=)

n958 See Oil Country Tubular Goods from Argentina, [*62 FR 32307, 32309.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SH4-7M90-006X-W4RB-00000-00&context=)

n959 See Steel Wire Rod from Trinidad and Tobago, [*62 FR 55003, 55006.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SD3-YTX0-006X-W3J8-00000-00&context=)

n960 See Steel Wire Rod from Venezuela, [*62 FR 55014, 55021.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SD3-YTX0-006X-W3J9-00000-00&context=)

n961 See Certain Cut-to-Length Carbon-Quality Steel Plate from Indonesia, [*64 FR 73155, 73162.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3Y6X-4890-006W-84SV-00000-00&context=)

n962 See Low Enriched Uranium from France IDM at "Purchase at Price that Constitute "More Than Adequate Remuneration'" which refers to the electricity company EDF, wholly-owned subsidiary of the Government of France.

n963 See Hot-Rolled Carbon Steel Flat Products from Thailand IDM at "Provision of Electricity for Less than Adequate Remuneration."

n964 See Kitchen Racks from the People's Republic of China IDM at "Government Provision of Electricity for Less than Adequate Remuneration."

n965 See Circular Welded Carbon-Quality Steel Pipe from the Sultanate of Oman IDM at "Provision of Electricity for LTAR."

n966 See Shrimp from Ecuador IDM at Comment 3.

n967 See Melamine from Trinidad and Tobago IDM at "Provision of Electricity for LTAR."

n968 See Welded Line Pipe from the Republic of Korea IDM at "Korea Electric Power Corporation (KEPCO's) Provision of Electricity for LTAR."

n969 See Chlorinated Isocyanurates from the People's Republic of China IDM at "Electricity for LTAR."

n970 See Cut-To-Length Plate from the Republic of Korea IDM at "Provision of Electricity for LTAR."

Moreover, section 701(a) of the Act requires the Department to countervail subsidies that are provided "directly or indirectly" to the manufacture or production of the subject merchandise. n971 Electricity benefits the production and manufacture of the subject merchandise since electricity is required to operate the production facilities of the softwood lumber producer. Under the CVD ***regulations***, if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Department will attribute the subsidy to sales of all products produced by the company. n972 Because electricity is required to operate the production facilities of Tolko, the benefit from the investigated program is attributed to all products produced by Tolko under 19 CFR 351.525(a).

n971 Although not relevant here, section 701(a) of the Act also requires that the ITC reach an affirmative material injury determination, as a prerequisite to the imposition of countervailing duties.

n972 See CVD Preamble, [*63 FR at 65400.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

As noted in Comment 51,the Department lacked experience with respect to the purchase of goods at the time the CVD ***regulations*** were promulgated. n973 Therefore, when the Department developed our general rules of attribution that are set forth under 19 CFR 351.525, we were unable to consider purchase of good subsidies within these general attribution rules; however, it is clear from the case precedent that is cited above, cases that were decided both before and after we enacted our current CVD ***regulations***, that benefits from electricity subsidies are attributed to all products. Furthermore, the attribution of MTAR benefits over sales of all products is consistent with case precedent. In SC Paper from Canada, the Department allocated the benefit from the purchase of land for MTAR over the respondent company's total sales. n974 In CRS from Korea, the benefit conferred from the purchase of electricity for MTAR was attributed over the respondent's total sales. n975 Finally, in HRS from Korea, the Department also attributed the benefit conferred from the purchase of electricity for MTAR over the respondent's total sales. n976

n973 See CVD Preamble, [*63 FR at 65379.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n974 See SC Paper from Canada Preliminary Determination IDM at 42. In the final determination, the benefit from this program was less than 0.005 percent and not included in the overall subsidy rate. See SC Paper from Canada IDM at 57.

n975 See CRS from Korea IDM at 37. The final determination was based upon AFA.

n976 See HRS from Korea IDM at 36. The final determination was based upon AFA.

Section 771(5)(D)(iv) of the Act states that the government purchase of a good is a financial contribution and section 771(5)(E)(iv) provides that the purchase of a good provides a benefit if that good is purchased for more than adequate remuneration. Therefore, the statute explicitly provides that a government purchase of a good can constitute the provision of a countervailable subsidy to an investigated company. If the attribution rules were interpreted based upon the understanding of Tolko, then the Department would effectively negate the language of the statute with respect to the provision of a good. Based upon the arguments of Tolko, not only would electricity subsidies be tied to electricity, but the purchase of a good by the government would also be tied to the domestic market for that good. Were that the case, the purchase of a good would never be countervailable, contrary to the express language of section 771(5)(E)(iv) of the Act.

Finally, under this investigated program, Tolko sells an input as defined within 19 CFR 351.503(b) and receives more revenues than it otherwise would have earned. The revenue earned by Tolko on its electricity sales benefits the overall operations of the company and, therefore, we have attributed the benefit over all products produced by the company.

Comment 50: Whether BC Hydro's EPA Program is Specific

The GBC argues that the EPA program is not specific because there is a broad and varied level of participation which includes many power providers other than companies that are sawmills. They state that, of the 105 active EPAs in place, less than 20 percent were biomass projects. n977

n977 See GBC Case Brief at 91.

Department's Position: In the Preliminary Determination, we found that the fact that BC Hydro had only 105 active EPAs with independent power producers meant that subsidy recipients were limited in number and that the program was, therefore, de facto specific under section 771(5A)(D)(iii)(I) of the Act. The GBC argues that these users were spread among a variety of projects, and less than 20 percent of these EPAs were for biomass projects. But the diversity or variety of users, or the relative percentage of users engaged in biomass projects as compared with other projects, is irrelevant to our specificity analysis under section 771(5A)(D)(iii)(I) of the Act. The fact that there are many power providers other than just sawmills does not negate the fact that there are only 105 actual recipients with EPAs under this program. As explicitly stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which truly are broadly available and widely used throughout an economy. n978 The EPA program which is limited to only 105 power providers in BC is not widely used throughout the provincial economy; therefore, the program is specific under section 771(5A)(D)(iii)(I) of the Act.

n978 See SAA at 929.

Comment 51: Which Benchmark Should the Department Use for the Purchase of Electricity for MTAR by BC Hydro

In the Preliminary Determination, the Department evaluated whether BC Hydro purchased electricity from Tolko and West Fraser for MTAR by comparing the purchase prices to certain benchmarks. For West Fraser, we compared the monthly weighted-average unit sales price of electricity from West Fraser to BC Hydro to the monthly base unit price that West Fraser paid to BC Hydro for electricity. The record did not contain similar data for Tolko at the time of the Preliminary Determination. Therefore, for Tolko, we compared the per-unit sales price that BC Hydro paid for electricity from Tolko to a weighted-average unit price that Fort is BC (a private investor-owned utility) paid to Tolko. n979

n979 See PDM at 84-85.

West Fraser and the GBC argue as a threshold matter that EPAs with independent power producers result from a ***competitive*** bidding process and, in that sense, they are necessarily market-based. Under these circumstances, the prices are adequate as a matter of law and no benchmark analysis is warranted. n980

n980 See West Fraser Rebuttal Brief at 13-14; GBC Rebuttal Brief at 20.

Tolko argues that we cannot use rates at which BC Hydro and Fort is BC sell electricity as benchmarks because these rates are not set by market forces, but rather reflect the utilities' embedded costs for generating and acquiring power plus a rate of return approved by the British Columbia Utilities Commission (BCUC). Similarly, Tolko argues that Fort is BC's purchases of electricity from Tolko were not market-determined because Fortis was in an excess supply position and was, thus, not a willing buyer. Furthermore, Tolko argues that these rates reflect spot prices for different energy products that are not comparable to long-term, green energy purchased by BC Hydro, and that, in the case of the Armstrong plant, were not even available to Tolko Armstrong. Tolko argues that the benchmark should be the bids from BC Hydro's Bioenergy Power Call Phase I, or the Department should, consistent with a tier-three benchmark find the purchase prices to be consistent with market principles. n981

n981 See Tolko Case Brief at 43-48 and 54-64.

West Fraser makes similar arguments with respect to a benchmark. In particular, West Fraser argues that BC Hydro's electricity purchases were market-determined, as a matter of law. West Fraser further contends that if the Department must make a comparison to a benchmark, then the benchmark should be the average successful bid price from BC Hydro's BioEnergy Phase I Call, or BC Hydro's long-run marginal cost. West Fraser contends that the alternative benchmarks are not "market-determined," and/or reflect different products and different market conditions. n982

n982 See West Fraser Rebuttal Brief at 13-25.

The GBC argues that FortisBC prices are inappropriate for use as a benchmark because they reflect purchases of opportunistic, spot-market power. By contrast, the GBC argues that the purchase prices of electricity by BC Hydro under the EPAs are consistent with market principles under a tier-three benchmark; in addition, the bids from BC Hydro's Bioenergy Power Call Phase I would be appropriate tier-one benchmarks. n983 The GBC also argues, in rebuttal to the petitioner, that there is no evidence that the electricity market in British Columbia is distorted and that use of a domestic tier-one benchmark is warranted. However, the GBC maintains that BC Hydro tariff rates are inappropriate benchmarks because they reflect the costs of all resources in BC Hydro's resource stack and do not reflect long-term firm, green energy purchases. n984

n983 See GBC Case Brief at 93-98.

n984 See GBC Rebuttal Brief at 21-22.

The petitioner argues that we cannot use the electricity rate charged by BC Hydro as a benchmark because these prices are government prices; instead we should use the prices charged by FortisBC. n985 The petitioner also argues, in rebuttal to Tolko, that the Department should continue to use Fortis benchmark prices, because the Department has a clear preference for actual transactions involving private parties when selecting a benchmark. The petitioner also states that the ***competitive*** calls to power advocated by Tolko are not useable tier-one benchmarks and are not contemporaneous with the POI. n986

n985 See Petitioner Case Brief at 52-60.

n986 See Petitioner Rebuttal Brief at 164-169.

Department's Position: As an initial matter, we disagree that prices paid under EPPs with BC Hydro are necessarily "adequate" because they result from a ***competitive*** bidding process. As the GBC recognizes, for government policy reasons, BC Hydro is required to purchase electricity from only sources within the province, and increasingly from renewable sources of power. n987 The GBC characterizes purchases from independent power producers, including the EPAs under investigation, as being part of this policy framework. n988 Because this policy framework limits the sources from which BC Hydro can source electricity, the prices that result from the EPA process cannot be considered market-based.

n987 See GBC Brief at 86 (citing GBC Primary QNR Response Part 1 at Exhibit BC-BCH-36).

n988 See GBC Brief at 87.

Furthermore, the fundamental premise underlying the GBC's and West Fraser's arguments is erroneous. The adequacy of remuneration does not exist in a vacuum; to determine whether remuneration is "adequate," a comparison source is needed. We, thus, continue to find that it is necessary to select a benchmark to calculate the benefit under this program.

In this regard, interested parties have submitted numerous comments with respect to the appropriate benchmark that the Department should use in the final determination to measure whether the purchase of electricity by BC Hydro under its EPAs with Tolko and West Fraser is for MTAR. For the most part, these comments are framed within a proposed benchmark analysis that is set forth under 19 CFR 351.511, which governs the ***regulation*** for the provision of good or services. But before addressing the benchmarks proposed by the interested parties, we first clarify the interpretive framework that we are applying in conducting a benefit analysis of the purchase of a good.

Section 351.512 of the Department's ***regulations*** pertains to the purchase of goods. This section of our ***regulations*** is designated as "[Reserved]." We stated in the CVD Preamble that this designation was driven by our lack of experience with procurement subsidies, and that as a result, we "are not issuing ***regulations*** concerning the government purchase of goods." n989 In the CVD Preamble, we also stated that we expect that any analysis of the adequacy of remuneration will follow the same basic principle set forth under 19 CFR 351.511 for the provision of a good or service, with a focus on what a market-determined price for the good in question would be. n990

n989 See CVD Preamble, [*63 FR at 65379.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n990 Id.

In this discussion in the CVD Preamble, the Department referred only to "procurement subsidies"; in other words, there is nothing in the CVD Preamble to suggest that the Department specifically contemplated the scenario presented here, where the government is both procuring and providing a good. Here, BC Hydro is both a purchaser of electricity, as well as the entity providing electricity, or setting and approving the prices at which electricity is provided to our respondent companies. Therefore, not only is the ***regulation*** for purchase of a good held in reserve, but the CVD Preamble also does not address the situation where a government is both a provider of the good as well as the purchaser of the good.

While 19 CFR 351.512 relating to the purchase of a good is held in reserve, 19 CFR 351.503(b) outlines the principles that the Department will follow when dealing with alleged subsidies for which the ***regulations*** do not establish a specific rule. In such instances, we will normally consider a benefit to be conferred "where a firm pays less for its inputs . . . than it otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn." We have adopted this definition in our ***regulations*** because it captures an underlying theme behind the definition of benefit contained in section 771(5)(E) of the Act. n991 Specifically, section 771(5)(E) of the Act states that a "benefit shall normally be treated as conferred where there is a benefit to the recipient." Section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy and reflects the "benefit-to-the-recipient" standard, which "long has been a fundamental basis for identifying and measuring subsidies under U.S. CVD practice." n992

n991 See CVD Preamble, 63 FR at 65359. In promulgating this provision, the Department clarified that we will normally consider a benefit to be conferred where "a firm pays less for its inputs (e.g., money, a good, or a service) than in otherwise would pay in the absence of the government program, or receives more revenues than it otherwise would earn." Id. (emphasis added).

n992 See SAA at 927.

Given that 19 CFR 351.512 for the purchase of a good is held in reserve, and the fact that the CVD Preamble for 19 CFR 351.512 does not address or reference the unique situation before us with respect to this allegation, where a government is both the provider and purchaser of the good, we find that our benefit analysis is more appropriately based upon the standard set forth under 19 CFR 351.503(b), which is in turn drawn from and consistent with section 771(5)(E) of the Act and the SAA. Therefore, we have not analyzed the benchmark sources discussed by the parties within the three-tiered hierarchy ofl9 CFR 351.511(a)(2). In so doing, we note that we have reached this conclusion based on the specific facts of this investigation (e.gan MTAR analysis in situations where the government is both a provider and a purchaser of the same good). However, in situations where the government is solely a purchaser of a good and does not engage in the provision of that same good, the Department recognizes that a tiered analysis similar to that set forth under 19 CFR 351.511 - the ***regulation*** for the provision of a good or service - may be more appropriate.

Having established that we will analyze the benefit conferred based on the benefit-to-the-recipient standard set forth in 19 CFR 351.503(b), we next consider an appropriate benchmark for measuring that benefit. As described above, the petitioner advocates use of the prices at which FortisBC purchased electricity from Tolko's Kelowna sawmill; and (2) Tolko, West Fraser, and the GBC advocate use of successful bid prices from BC Hydro's BioEnergy Phase I Call, or BC Hydro's long-run marginal costs (to show that the purchases were consistent with market principles). The petitioner, West Fraser, Tolko, and the GBC all argue that BC Hydro's published electricity sales prices are not an appropriate source for measuring the adequacy of remuneration for BC Hydro's purchases of electricity.

We disagree that we should not calculate the benefit conferred on Tolko and West Fraser by comparing sales to BC Hydro under the relevant EPAs to the electricity tariffs that BC Hydro charged these same respondents. During the POI, Tolko and West Fraser both sold electricity to BC Hydro under their respective EPAs. In addition, during the POI, both respondents also purchased electricity from BC Hydro. The electricity rates charged by BC Hydro to consumers in the province are all regulated and approved by the GBC through the BCUC, the provincial public utility regulatory agency. n993 The BCUC requires BC Hydro to sell electricity at prices that reflect its embedded costs for generating and acquiring power, plus a rate of return that BCUC approves. n994 Therefore, during the POI, the provincially-owned BC Hydro sold electricity to Tolko and West Fraser at rates approved by the GBC through the BCUC and purchased electricity from these respondents at the rates established under the EPAs.

n993 See Tolko May 30, 2017 Supplemental Questionnaire Response at 10.

n994 See Tolko March 13, 2017 Initial Questionnaire Response at 128-29.

Although we acknowledge that the electricity tariffs that are charged by both BC Hydro are regulated and approved by the GBC through the BCUC, we disagree that this precludes their use in determining the benefit to the recipients. To the contrary, we find that this benchmark best reflects the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA and conforms with the standard of benefit language codified within 19 CFR 351.503(b). Namely, if a government provides a good to a company for three dollars and then purchases the same good from the company for ten dollars, we cannot see how under the "benefit-to-the-recipient" standard that is set forth under section 771(5)(E) of the Act and the SAA, the benefit is anything other than seven dollars. Therefore, we see no basis for not relying on the prices BC Hydro charges Tolko and West Fraser for electricity as an MTAR benchmark. n995

n995 We note that the petitioner has not alleged that the approved electricity tariff rates from BC Hydro are for LTAR; therefore, the Department has not considered how the benefit to the recipient may be calculated in an investigation where there is a corresponding LTAR allegation with respect to the same input allegedly provided for MTAR.

In this investigation, BC Hydro sells electricity to both Tolko and West Fraser for rates that are approved by the BCUC while BC Hydro purchases electricity from both respondents under rates determined by the respective EPAs. As such, in the final determination, to determine whether Tolko and West Fraser received benefits under this program, we compared the prices that BC Hydro charged the two respondents for electricity to the rates that BC Hydro paid Tolko and West Fraser when it purchased electricity under the relevant EPAs. Based upon this comparison we find that BC Hydro purchased electricity from Tolko and West Fraser for MTAR during the POI.

The petitioner argues that we should use as a benchmark the electricity sales prices from one of Tolko's plants to FortisBC, a private investor-owned utility. We disagree that this benchmark best captures the "benefit to the recipient" under section 771(5)(E) of the Act. As articulated above, we find on this record that the best measure of the "benefit-to-the-recipient" is the difference between the price at which a government provided the good (i.e., electricity) and the price at which the government purchased that same good. The FortisBC benchmark does not capture this difference.

Both Tolko and West Fraser, as well as the GBC, argue that a more appropriate benchmark would be the winning bids received from BC Hydro's Bioenergy Power Call Phase I; however, the selection of such a benchmark, based on the information on the record, would be inconsistent with the statute and the Department's ***regulations*** because the benchmark used to measure the benefit from an investigated program cannot be from the program being investigated. n996 BC Hydro purchases energy from independent power producers pursuant to long-term EPAs, and we are investigating the benefit conferred by the EPAs signed between the provincially-owned utility company and the two respondent companies, Tolko and West Fraser. The benchmark that Tolko, West Fraser, and GBC propose using are winning bids on other EPAs. Therefore, they are arguing that we should determine whether there is a benefit under the program by measuring the rates provided under the investigated program with other rates within the investigated program. As noted above, we are measuring the benefit conferred on Tolko and West Fraser based on the benefit-to-the-recipient standard. Using rates from an investigated subsidy program to measure the benefit from that same investigated program is inconsistent with the benefit-to-the-recipient standard because, first, it does not capture the difference between the price at which the government sold electricity and the price at which it purchased electricity, and second, the comparison would be circular insofar as it would result in a comparison of an alleged subsidy with itself.

n996 See, e.g., 771(5)(E) of the Act; 19 CFR351.503(b); 19 CFR351.505; 19 CFR351.506; 19 CFR351.507;and 19 CFR351.511(a)(2)(i)(ii).

The GBC and Tolko also argue that these EPAs reflect the market-based prices for the specific electricity products sold by Tolko and West Fraser to BC Hydro and must be used on that basis. However, as we state above, it is incongruent to select as a benchmark price the same program price for electricity that is under investigation as providing a benefit, i.e., comparing an allegedly subsidized price with the same allegedly subsidized price. The GBC also appears to be arguing that there are different types of electricity. While electricity can be generated using various sources - hydro, coal, gas, oil, solar, nuclear, biomass - there is no information on the record to demonstrate that the method used to generate electricity changes the physical characteristics of electricity or the fungibility of electricity. Indeed, BC Hydro itself does not track the source of the electricity that it sells to its customers. n997

n997 See GBC Primary QNR Response Part 1 at BC 11-47.

Tolko, West Fraser, and the GBC also argue that the prices at which BC Hydro purchases electricity under the West Fraser and Tolko EPAs are consistent with "market principles." As a tier-three benchmark, these parties propose a benchmark that reflects BC Hydro's long-run marginal costs of purchasing firm energy from renewable resources. First, as explained above, our analysis of the appropriate benchmark is based upon 19 CFR 351.503(b), and not a tiered analysis set forth in the ***regulation*** for the government provision of a good or service, 19 CFR 351.511. Second, we disagree that this benchmark best captures the "benefit to the recipient" under section 771(5)(E) of the Act. As articulated above, we find on this record that the best measure of the "benefit to the recipient" is the difference between the price at which a government provided the good (i.e., electricity) and the price at which the government purchased that same good. The proposed benchmark of BC Hydro's long-run marginal costs does not capture this difference.

Comment 52: Whether the GOQ's Purchase of Electricity Is Specific

Resolute argues that Hydro-Quebec enters into agreements to purchase electricity from a wide range of companies in addition to those involved in the forest industries. n998 Resolute claims that forest biomass cogeneration represents less than six percent of the generating capacity of the long-term power purchase contracts to which Hydro-Quebec was a party during the POI, and that none of those projects producing energy involved sawmills. On that basis, Resolute asserts that the purchases of energy by Hydro-Quebec are not specific to an enterprise or industry.

n998 See Resolute Case Brief at 41-42.

The petitioner rebuts that the Department correctly found the purchase of electricity by Hydro-Quebec to be de facto specific in the Preliminary Determination. n999

n999 See Petitioner Rebuttal Brief at 129-130.

Department's Position: We disagree with Resolute that our specificity analysis should focus on Hydro-Quebec's relative purchase of electricity generated from various sources, such as wind, hydro-electric, natural gas cogeneration, and forest biomass cogeneration. First, as discussed with regard to Comment 54, we do not differentiate between various types of electricity. Moreover, section 771(5 A)(D)(iii) of the Act directs the Department to determine whether a subsidy may be specific as a matter of fact by examining the enterprises or industries which received assistance under the program being investigation. The GOQ provided the number of producers that had a PAE 2011-01 agreement in each year from 2013 through 2015. n1000 The data indicate that, for each year, the number of producers benefitting from the program was limited, with just six producers in 2013, nine producers in 2014, and 12 producers in 2015. n1001 For 2014 and 2015, eight and 11 of the firms were forestry biomass producers, respectively. n1002 Based on the record evidence, we continue to find the purchase of electricity by Hydro-Quebec to be de facto specific within the meaning of section 771(5A)(D)(iii)(I) of the Act because recipients of the subsidy are limited in number.

n1000 See GOQ Supp QNR 1 Response Volume I at 1.

n1001 Id.

n1002 Id.

Comment 53: Whether Resolute's Electricity Sales Are Tied to Non-Subject Merchandise

Resolute argues that, if there were a benefit from Hydro-Quebec's purchase of electricity from Resolute under the PAE 2011-01, it would be tied to the production of paper, which is downstream from the production of lumber. n1003 Resolute states that it produces and sells electricity to Hydro-Quebec at its Dolbeau and Gatineau pulp and paper mills. Resolute adds that it books the revenues against the cost of goods sold at those mills, which reduces the cost of producing paper at those mills but does not benefit Resolute generally. Resolute submits that a subsidy is tied when the intended use is known to the subsidy giver and acknowledged prior to, or concurrent with, the bestowal of the subsidy. Resolute adds that because lumber is upstream to paper production, no paper from the mills is used as an input to Resolute's production of softwood lumber.

n1003 See Resolute Case Brief at 42-44.

In rebuttal, the petitioner argues that, because the subsidy benefits electricity production, an input to both subject and non-subject merchandise, it is correct to attribute the benefits to Resolute's overall production. n1004 The petitioner adds that even if the GOQ's purchases are considered to be a subsidy tied to electricity production, electricity is an input to the production of softwood lumber. The petitioner submits that the question of whether a company actually uses the subsidized input in its production is irrelevant to the attribution of the subsidy.

n1004 See Petitioner Rebuttal Brief at 134-135.

Department's Position: We disagree with Resolute's argument that, because its Dolbeau and Gatineau pulp and paper mills sell electricity to Hydro-Quebec, the benefits from the sales are tied to non-subject merchandise. The fact that Resolute manufactures non-subject merchandise at the Dolbeau and Gatineau mills does not change the fact that those two mills are part of the Resolute corporate group. The Dolbeau and Gatineau mills are not distinct corporate entities, which would require the Department to conduct an analysis under 19 CFR 351.525 (b)(6)(ii)-(v) to determine whether subsidies received by those two mills are attributable to Resolute. Rather, Resolute is the corporate entity which files the tax documents and consolidates the financial statements of all of its mills - including Dolbeau and Gatineau - as one corporate entity. n1005 Neither the statute nor the Department's ***regulations*** "provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm." n1006 Further, the Department does not tie subsidies on a plant- or factory-specific basis. n1007

n1005 See Resolute Verification Report at 3-4; see also Resolute Supp QNR at 2, Exhibit RESA 1S-3, and Exhibit RESA 1S-5.

n1006 See SC Paper from Canada IDM at 161 (citing CFS from the PRC IDM at Comment 8).

n1007 See, e.g., SC Paper from Canada - Expedited Review IDM at 99.

The Department recognizes that money is fungible and its use for one purpose may free up money to benefit another purpose. Subsidies provided to a division of a company, such as a pulp and paper mill, will impact the overall production and sale of all other products of the company. Consequently, there is no need to address attribution because money is fungible within a single, integrated corporate entity (as opposed to a conglomeration of entities for which an analysis under 19 CFR 351.525(b)(6) may be required). The manner in which Resolute records the benefit from the PAE 2011-01 program internally within its financial accounts is irrelevant to our analysis, which is informed by our ***regulations*** and practice.

The only exception is if the subsidy is tied to the production or sale of a particular product. Section 351.525(b)(5)(i) of the Department's ***regulations*** states that, generally, "(i)f a subsidy is tied to the production or sale of a particular product, the Secretary will attribute the subsidy only to that product." In making this determination, the Department analyzes the purpose of the subsidy based on information available at the time of bestowal. n1008 The Department's practice is to identify the type and monetary value of a subsidy at the time the subsidy is bestowed rather than examine the use or effect of subsidies (i.e., to trace how the benefits are used by companies). A subsidy is only tied to a particular product when the intended use is known to the subsidy provider (i.e., the GOQ) and so acknowledged prior to, or concurrent with, the bestowal of the subsidy. This analysis has been previously upheld by the CIT. n1009

n1008 See CVD Preamble, [*63 FR at 65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1009 See, e.g., Essar Steel Ltd. at 1296.

Resolute contends that the electricity sales, which are used to reduce the pulp and paper mills' cost of goods sold, are tied to the production of non-subject merchandise because the production of paper is downstream from the production of lumber. However, there is no information on the record that establishes that, at the time of approval or bestowal, the benefits from the sale of electricity under PAE 2011-11 to Hydro-Quebec are tied to the production of paper. The GOQ reported that the PAE 2011-01 is aimed at the purchase of 300 MW of energy from forest biomass cogeneration power plants. n1010 We thus find that there is no record evidence establishing that the sale of electricity under PAE 2011-01 is tied solely to producers of non-subject merchandise such as pulp and paper mills.

n1010 See GOQ Primary QNR Response at QC Volume III-a, page 55.

Comment 54: Whether the Department Should Use the Industrial L Rate as the Benchmark for the GOQ's Purchase of Electricity Under PAE 2011-01

In the Preliminary Determination, the Department calculated Resolute's benefit from the GOQ's purchase of electricity for MTAR using, as a benchmark, the Industrial L electricity rate that Resolute's pulp and paper mills paid to Hydro-Quebec for electricity during the POI. n1011

n1011 See PDM at 85-86.

The GOQ and Resolute argue that the Department applied the wrong benchmark (i.e., the Industrial L rate) to calculate the benefit from the sale of electricity to Hydro-Quebec in the Preliminary Determination. n1012 The GOQ states that the Industrial L rate does not differentiate by the type of power sold. However, because hydropower accounts for more than 98 percent of Hydro-Quebec's power supply, the GOQ argues that the Industrial L rate is effectively the price for hydropower. The GOQ asserts that a hydro-dominated rate is not the correct benchmark for a renewable energy-only program. Instead, the GOQ and Resolute submit that the Department should construct a benchmark using renewable energy prices as reported in the Merrimack study. They state that Hydro-Quebec submitted the Merrimack study to the Regie de l'energie as a benchmarking report to establish that the PAE 2011-01 prices reflect prevailing market conditions. Resolute states that the Merrimack study concludes that the average levelized cost of biomass-generated electricity in North America was C$110.70/MWh and, therefore, shows that Hydro-Quebec paid Resolute a market price.

n1012 See GOQ Case Brief at 49-57; see also Resolute Case Brief at 44-45.

The GOQ further claims that the Department has, in 19 CFR 351.511(a)(2), established a three tiered hierarchy for the identification of benchmarks, and that the Merrimack study provides a valid tier-two benchmark because it (1) reports a world market price using biomass price prices from Ontario and the United States; (2) the market studied for the benchmark is identical, not just comparable to sales under the PAE 2011-01; and (3) because the study set the purchase prices under the PAE 2011-01, the prices are available to consumers in Quebec. The GOQ adds that the study may also be used as a tier-three benchmark because it is not only evidence of the government's price setting philosophy, but it was also used to establish the terms and conditions of the PAE 2011-01.

The petitioner argues that the Industrial L rate is a reasonable benchmark and should be maintained for the final determination. n1013 The petitioner asserts that there is no tier-one benchmark because Hydro-Quebec holds the monopoly on electricity distribution in Quebec, and no tier-two benchmark because Hydro-Quebec imports less than one percent of the volume of electricity it exports. Because the Department found that "there is no evidence on the record to suggest that the electricity rates paid by consumers in Quebec are not market-based prices," n1014 the petitioner asserts that the Industrial L rate reflects market principles and, thus, constitutes a valid tier-three benchmark.

n1013 See Petitioner Rebuttal Brief at 169-178.

n1014 See PDMat86.

The petitioner further argues that the Merrimack study is not a valid benchmark because (1) the biomass purchase rates in the study, namely the Ontario Power Authority and Vermont Public Service Board feed-in tariffs, are not appropriate benchmarks because Quebec does not rely on imports of electricity; (2) the biomass purchase rates from other provinces are irrelevant as renewable energy policies and biomass purchase programs differ by province; and (3) feed-in tariffs are not based on market principles as noted in the study. In response to statements that the Industrial L rate is based on hydropower, the petitioner asserts that there is no evidence that that the rate is effectively the price for hydropower. The Industrial L rate is the price available to large industrial consumers, including Resolute's pulp and paper mills. The petitioner argues that differences in pricing and production methods for electricity do not make the Industrial L rate an inappropriate benchmark under the ***regulations***. Moreover, the petitioner asserts that Department need only select a benchmark that is comparable, and not identical, and the respondents failed to demonstrate that their proposed benchmark is the only reasonable approach.

Department's Position: The SAA explains that section 771(5)(E) of the Act provides the standard for determining the existence and amount of a benefit conferred through the provision of a subsidy. n1015 Under that provision, a benefit is normally treated as conferred where there is a benefit to the recipient. n1016 In this investigation, Resolute is not merely selling electricity to Hydro-Quebec; Resolute also purchases electricity from Hydro-Quebec. For an MTAR program such as this one, where the government is acting on both sides of the transaction'i.e., both selling a good to, and purchasing that good back from, a respondent'the benefit to the respondent is the difference between the price at which the government is selling the good to the company, and the price at which the government is purchasing that good back from the company.

n1015 See SAA at 927.

n1016 See section 771(5)(E) of the Act.

Resolute's pulp and paper mills purchase electricity from Hydro-Quebec at the Industrial L rate, which is the tariff in effect during the POI. Those same mills sell electricity to back to Hydro-Quebec under the PAE 2011-01 program at an administratively-set price. Thus, the benefit to Resolute is the difference between these two prices. We, therefore, continue to determine that the appropriate benchmark rate to calculate the benefit Resolute receives from the sale of electricity back to Hydro-Quebec is the Industrial L rate. However, we are adjusting the Industrial L rate from that used in the Preliminary Determination, as discussed in Comment 55.

Moreover, to the extent that the parties argue for or against the use of a proposed benchmark on the basis of its "tier" under 19 CFR 351.511(a)(2), we disagree that 19 CFR 351.511(a)(2) provides the appropriate framework given the unique facts in this investigation. As discussed in the CVD Preamble, the Department has not codified a ***regulation*** which expressly provides instruction on how to analyze a government's purchase of goods for MTAR. n1017 We stated that "(u]nlike the case with the provision of goods and services, … we have not had the opportunity to gain sufficient experience" with MTAR allegations and, thus, were "hesitant" to set forth how we would analyze such allegations. n1018 We stated that we "expect [ed]" that 19 CFR 351.511, regarding the provision of goods and services by a government for LTAR would provide the Department with an approach to calculating the benefit received by a respondent where the government procures goods and services for MTAR. n1019 However, Hydro-Quebec's presence on both sides of the electricity transaction with Resolute presents a unique situation that is different from either a standard provision program, in which the government only provides the respondent with a good, or what we envisioned as a standard procurement program at the time of the CVD Preamble, where the government is only a purchaser of a good from a respondent. Here, Hydro-Quebec is both purchasing from, and selling to, Resolute electricity. Therefore, we disagree that our "***regulations*** establish a three-tiered hierarchy for the identification of benchmarks" n1020 with regard to MTAR programs, or that an analysis informed by l9 CFR 351.511(a)(2) is necessary to calculate Resolute's benefit in this unique situation. For further information on the appropriate regulatory framework regarding the analysis of this type of MTAR program, please see Comment 51.

n1017 See CVD Preamble, [*63 FR at 65379.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1018 Id.

n1019 Id.

n1020 See GOQ Case Brief at 54.

The GOQ asserts that the Industrial L rate is a hydropower price which cannot serve as the benchmark for a biomass energy program, such as the purchase of biomass electricity from Resolute by Hydro-Quebec under PAE 2011-01. The GOQ relies on Canada - Feed-In Tariff Program, a WTO dispute, to support its contention. However, our determination to use the Industrial L rate is based on our interpretation of the Act regarding the calculation of benefit where a government procures a good for MTAR; the Act is fully consistent with the international obligations of the United States. Moreover, the Department is governed by U.S. law, and, as we have explained, our calculation of benefit using the Industrial L rate as a benchmark is fully consistent with section 771(5)(E) of the Act.

Moreover, the GOQ failed to provide any evidence that the prevailing market conditions for the provision of electricity by Hydro-Quebec is differentiated based upon the manner in which the electricity is generated. The GOQ itself reported that, when explaining how electricity rates are set, "there is no distinction between sources of electricity generated." n1021 This statement is corroborated by the tariff schedules provided by the GOQ, which indicate that there is no distinction. Within the schedules, the Industrial L rate is listed with no disclosure as to the source from which that electricity is generated. n1022 This evidence indicates that electricity is electricity regardless of the source from which it was generated. n1023 Therefore, we find no merit to the GOQ's argument that a rate for electricity which might be generated from hydro-power cannot be used as a benchmark for the PAE-2011-01 program, and thus the Department must use the Merrimack study as a benchmark.

n1021 See GOQ Primary QNR Response at QC Volume III-a (part 15) at QC-BIO-12.

n1022 Id. at Exhibit QC-BIO-23, page 59 and Exhibit QC-BIO-24, page 55.

n1023 See CRS from Korea IDM at Comment 2.

Comment 55: Whether the Industrial L Rate Benchmark Was Improperly Calculated

As discussed in Comment 54, Resolute argues that the Industrial L rate is not the correct benchmark. However, should the Department continue to use that rate as a benchmark, Resolute asserts that it must adjust the Industrial L rate to capture the entire price paid by Resolute's pulp and paper mills to Hydro-Quebec for electricity. n1024 Resolute claims that the Department accounted for only part of what Resolute paid to Hydro-Quebec for electricity under the Industrial L rate, i.e., the variable part of the rate. However, Resolute also paid a fixed, or demand, charge as part of the rate, which was not included in the benchmark. Resolute claims that the Department can rely on the electricity invoices taken at verification to construct an accurate benchmark for the final.

n1024 See Resolute Case Brief at 45-47.

The petitioner argues that Resolute confuses the two components of the Industrial L rate. n1025 The "fixed" component was 3.260 per kilowatt hour, which the Department applied as the benchmark. Therefore, the petitioner asserts that Resolute wants an adjustment to account for a variable cost. However, should the Department decide to account for a billing demand adjustment, the petitioner argues that it would also have to account for all other entries that impact the Industrial L rate paid by Resolute, rather than just the demand charge requested by Resolute.

n1025 See Petitioner Rebuttal Brief at 178-180.

Department's Position: The petitioner confuses the fixed and variable components of the Industrial L rate. In the Preliminary Determination, we applied, as the benchmark, the variable part of the Industrial L rate, which was 3.260 per kilowatt hour, effective April 1, 2015. n1026

n1026 See Resolute Preliminary Calculations; see also GOQ Primary QNR Response at QC Volume III-a (part 15) at Exhibit QC-BIO-24, page 55.

As discussed in Comment 54, we have determined that the benefit that Resolute received under this program is the difference between the amount that it paid to Hydro-Quebec for its purchases of electricity, and the amount that it received from Hydro-Quebec for its sales of electricity. Accordingly, the appropriate benchmark would be the total amount that Resolute paid to Hydro-Quebec for electricity under the Industrial L rate.

We verified that Resolute paid to Hydro-Quebec both a fixed demand charge rate and a variable consumption rate for the electricity that it purchased during the POI. n1027 Therefore, we agree with Resolute that, in addition to the variable consumption component, the fixed demand charge component of the Industrial L rate should be included in the benchmark. We have relied on electricity invoices for Resolute's pulp and paper mills, which sold electricity to Hydro-Quebec, to derive an electricity benchmark rate that reflects the total amount that Resolute paid to Hydro-Quebec under the Industrial L rate during the POI. The benchmark accounts for those items that formed the amount that Resolute paid Hydro-Quebec under the Industrial L rate, exclusive of taxes, as demonstrated in the two POI monthly invoices obtained at verification. n1028 Therefore, on the basis of the record evidence, we have accounted for the entries that impacted the electricity rate paid by Resolute as argued by the petitioner.

n1027 See Resolute Verification Report at 16-17 and Exhibit VE-32.

n1028 Id.

Because the computation of the benchmark rate is based on proprietary data, a further discussion of the benchmark is contained in Resolute's final calculations memorandum. n1029

n1029 See Resolute Final Calculation Memorandum.

Comment 56: Whether the Canada-New Brunswick Job Grant Program is Regionally Specific

In the Preliminary Determination, the Department calculated a countervailable subsidy for JDIL's receipt of funds under the Canada-New Brunswick Job Grant Program. The GNB argues that the Department erred in finding the program to be regionally specific, as it is part of the federal Canada Job Grant program and is available in all provinces. n1030 The petitioner argues that the Department's preliminary determination that the program is regionally specific is correct. n1031

n1030 See GNB Case Brief at 44-45.

n1031 See Petitioner Rebuttal Brief at 130-131.

Department's Position: We disagree with the GNB that the Canada-New Brunswick Job Grant Program represents one aspect of a more comprehensive federal program. In its initial questionnaire response, the GNB described this program as one of a series of Canada Job Fund agreements between the federal government and individual provincial/territorial governments. n1032 We note that these are individual agreements on funding between the federal government of Canada and each individual province/territory. The primary responsibility for the design of this program rests with the GNB. n1033 Thus, our record demonstrates that it is the GNB that determines the eligibility for assistance under this program, and the distribution of this assistance. Our review of the agreement between the GOC and the GNB establishing this program confirms our finding that it was specifically tailored to the province of New Brunswick, and it is not available in other provinces or territories within Canada. n1034 Further, we find that the GNB's unique role in designing and administering this program distinguishes it from similar, but still distinct, programs that the GOC may fund in other provinces or territories. As such, consistent with our finding in the Preliminary Determination, we continue to determine that this program is regionally specific in accordance with section 771(5 A)(D)(iv) of the Act.

n1032 See GNB Primary QNR Response at NBIII-4.

n1033 Id. at Exhibit NB-CNBJG-1, page 1.

n1034 Id. at Exhibit NB-CNBJG-2.

Comment 57: Whether the Alberta Bioenergy Producer Credit Program is Countervailable

In the Preliminary Determination, the Department found that Alberta's BPCP is a recurring grant program expressly limited to bioenergy producers that confers a benefit equal to the amount of the grant received. n1035 According to the GOA and West Fraser, the record demonstrates that payments under the BPCP are not tied to the production of subject merchandise. Rather, the GOA and West Fraser argue that the BPCP grants are tied to the production of bioenergy, which they claim is non-subject merchandise. n1036 As a result, the Department should not have included benefits under the BPCP in the net subsidy rates calculated for respondents in the instant investigation.

n1035 See PDM at 65.

n1036 See GOA Case Brief at 76-77; see also West Fraser Case Brief at 59-61.

The petitioner argues that, because the BPCP subsidy benefited the production of energy, an input to both subject and non-subject merchandise, the Department may appropriately attribute those benefits to the recipients' overall production pursuant to 19 CFR 351.525(b)(5)(ii).

The petitioner states that the Department preliminarily determined that the BPCP "provides funding for production of various types of biofuels, including electricity and heat produced from biomass, such as hog fuel." n1037 Thus, the petitioner argues that, even if the Department accepts the GOA and West Fraser's argument that BPCP grants are tied to the production of various types of biofuels, n1038 the Department should continue to attribute those grant benefits to West Fraser's overall production because energy (including energy from biofuels) is an input to that production, i.e., the downstream products, even if the energy produced by West Fraser is not actually used in its softwood lumber production. n1039 The petitioner asserts that the question of whether a company actually uses the subsidized input in its production is irrelevant to the attribution of that subsidy. n1040

n1037 See Petitioner Rebuttal Brief at 134 (citing PDM at 64).

n1038 Id. at 134 (citing GOA-ASLTC Case Brief at 76-77 and West Fraser Case Brief at 59-61).

n1039 Id. atl35 (citing IPA from Israel).

n1040 Id.

In addition to arguing that BPCP payments were tied to non-subject merchandise, both the GOA and West Fraser, by reference to the GOC Consolidated Case Brief, incorporate the argument that because the Department did not initiate an investigation on BPCP, the program is not lawfully countervailable. n1041 The petitioner states this argument fails to appreciate the Department's statutory mandate. Section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition." n1042

n1041 Id. at 141 (citing GOA Case Brief at 77; see also West Fraser Case Brief at 61).

n1042 Id. atl41 (citingsection775 of the Act; see also 19 CFR 351.311(b)).

Department's Position: We disagree with the GOA and West Fraser's claim that the record reflects that payments under the BPCP are tied to non-subject merchandise. According to 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," the Department "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," the Department's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has actually used the subsidy. n1043 Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents, e.g., the application, contract or approval, explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy. n1044

n1043 See CVD Preamble, [*63 FR at 65403*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) (emphasis added).

n1044 See CVD Preamble, [*63 FR at 65402;*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) see also CRS from Korea IDM at Comment 14; see also Solar Cells from PRC IDM at Comment 13.

The record indicates that there is no such evidence of tying. Instead, under the BPCP, which is intended for bioenergy producers, there is no limitation on the type of production necessary to qualify for this program, as bioenergy is a byproduct of the production process. n1045 Specifically, West Fraser reports several input sources for its production of bioenergy, stating "the source for the bioenergy feed stocks of black liquor and hog fuel (residual wood fiber) is the wood fiber harvested from the Forest Management Areas (FMA's) associated with the pulp mills and saw mills owned and operated by West Fraser Mills Ltd. throughout Alberta." n1046 Accordingly, softwood lumber or pulp production may be used to produce the biofuels pursuant to the BPCP. n1047

n1045 See West Fraser Primary QNR Response, Part 1 at 78-82 and Exhibit WF-ALBOA-7.

n1046 Id. at Exhibit WF-ALBOA-8, at 2.

n1047 Id. at 78.

West Fraser references the GOA's bestowal documents in support of its claim that BPCP grants are tied to the production of bioenergy, not softwood lumber. n1048 However, consistent with the Department's practice, the Department continues to attribute the BPCP grant benefits to West Fraser's overall production because energy is used to power the company's operations West Fraser provided the BPCP Guidelines in WF-ALBOA-7, application submitted by Hinton Pulp & Paper in Exhibit WF-ALBOA-8, and the agreement between Alberta and Hinton Pulp & Paper in Exhibit WF-ALBOA-9. We find that there is no evidence in these documents that shows that the BPCP grants are tied to non-subject merchandise at the time of bestowal. Furthermore, under the CVD ***regulations***, if subsidies allegedly tied to a particular product are in fact provided to the overall operations of a company, the Department will attribute the subsidy to sales of all products produced by the company. n1049 Because electricity is required to operate the production facilities of West Fraser, the benefit from the investigated program is attributed to all products produced by West Fraser under 19 CFR 351.525(a).

n1048 See West Fraser Case Brief at 60-61.

n1049 See CVD Preamble, [*63 FR at 65400.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

The BPCP grants are expressly limited to bioenergy producers and, therefore, de jure specific in accordance with 771(5A)(D)(i) of the Act. n1050 Further, we find that the BPCP confers a benefit equal to the amount of the grant received pursuant to 19 CFR 351.504(a). n1051 Accordingly, the Department continues to treat the BPCP as a countervailable subsidy in this final determination.

n1050 See PDM at 65; see also GOA Supp QNR Response, Part 1 at Exhibit AB-BPCP-3.

n1051 Id.

Finally, we disagree with West Fraser's and the GOA's arguments that because the Department did not formally initiate an investigation of the BPCP, the program is not lawfully countervailable. Specifically, as discussed in Comment 5, section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition." n1052 There is no legal requirement that the Department initiate a formal investigation before investigating (and ultimately countervailing) what appear to be countervailable subsidies discovered during an investigation. Accordingly, the Department continues to find that it is lawful to countervail the BPCP.

n1052 See section775 of the Act; see also 19 CFR 351.311(b).

Comment 58: Whether the Department Incorrectly Analyzed the BC Hydro Power Smart: Load Curtailment Program

In the Preliminary Determination, the Department countervailed incentive payments to West Fraser under the Load Curtailment subprogram of the BC Hydro Power Smart program as recurring grants, and calculated a benefit for the POI. n1053 In their case briefs, the GBC and West Fraser claim that the Department made several errors in its findings regarding this subprogram. The GBC argues that this subprogram is neither de jure nor de facto specific; this argument is addressed more broadly with regard to this and the other BC Hydro Power Smart subprograms under Comment 59. Additionally, the GBC and West Fraser argue that we erroneously treated the payments as grants, rather than as compensation for service and, thus, unlawfully countervailed the purchase of a service by BC Hydro, which cannot give rise to a financial contribution under the Act (which only addresses an authority's purchase of goods). n1054 West Fraser also claims that we mistakenly included a payment received outside the 2015 POI and improperly attributed benefits tied to non-subject merchandise production at a pulp mill. n1055

n1053 See PDM at 66.

n1054 See West Fraser Case Brief at 61-64; see also GBC Case Brief at 82.

n1055 See West Fraser Case Brief at 61-64.

In rebuttal, the petitioner counters that the payment received outside the POI represented part of the benefit accrued in the POI and should remain in the calculation; that the Department does not tie subsidy benefits to individual plants or factories; and that treatment of the payments as "incentive" grants, rather than compensation for service, was reasonable and supported by the record facts. n1056

n1056 See Petitioner Rebuttal Brief at 136, 143-145

Department's Position: Upon further review of the record, we find that in calculating the benefit under this subprogram for the Preliminary Determination, we included a payment to West Fraser in January 2016, which is outside the POL We disagree with the petitioner that the benefit should be counted in the POI because it was accrued in the POI. Under 19 CFR 351.504(b), the Department considers receipt of benefit from a grant as occurring on the date the grant is received, i.e., the date it is disbursed, which in this case was outside the POI. Consequently, we have corrected the calculation for the final determination by excluding this January 2016 payment from BC Hydro.

However, we disagree with West Fraser's claim that since the payments went to a pulp mill, they are tied to non-subject merchandise. We agree with the petitioner that the payments are untied subsidies. To determine whether a subsidy is "tied to the production or sale of a particular product" under 19 CFR 351.525(b)(5)(i), the Department examines "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not how a firm has actually used the subsidy. n1057 Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents'e.g., the application, contract or approval'explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy. n1058 The record indicates no such evidence of tying.

n1057 See CVD Preamble, [*63 FR at 65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1058 See CVD Preamble, [*63 FR at 65402;*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) see also, e.g., OCTG from Turkey IDM at 59.

While the pulp mill is identified in the relevant contract as the facility receiving the subsidy, n1059 this fact alone does not constitute tying, which under our ***regulations*** is understood with reference to a product or the sale or production of a product, n1060 not to a component facility of the recipient company. The CVD Preamble states that a tied subsidy benefit is "a benefit bestowed specifically to promote the production of a particular product." n1061 Nothing in the relevant contract suggests that the incentive applies to, or is in support of, the production of pulp specifically. Under the Load Curtailment subprogram, a company qualifies for the incentives by agreeing to curtail energy usage at a given facility based on the level of load curtailment, not on the particular product or production of the facility. The pulp mill is a component division of the company, not a separate entity and neither the statute nor our ***regulations*** provide for, or require, the attribution of a domestic subsidy to a component part of a firm. n1062 Thus, we continue to treat the payments as untied subsidies attributable to the company's overall operations consistent with 19 CFR 351.525(b)(3).

n1059 See West Fraser Primary QNR Response, Part I, at Exhibit WF-BHPS-13.

n1060 See 19 CFR 351.525(b); see also CVD Preamble, [*63 FR at 65400*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) ("we attribute a subsidy to sales of the product or products to which it is tied").

n1061 See CVD Preamble, [*63 FR at 65402*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) (incorporating, by reference, language from the 1989 Proposed ***Regulations***).

n1062 See, e.g., SC Paper from Canada IDM at 161; see also CFS from the PRC IDM at Comment 8.

We also disagree with the GBC and West Fraser that the Department erroneously treated the program payments as conferring a grant. We do not agree that the curtailment of power use during peak demand amounts to a performance of a service by the company. As noted by the petitioner and as described in the Preliminary Determination, n1063 the record evidence indicates that the payments are "incentives" to the company, provided in the manner of recurring grants.

n1063 See Petitioner Rebuttal Brief at 144; see also PDM at 66.

In particular, the GBC's own responses to questionnaires refer to the payments under this and the other subprograms of the Power Smart Program as "incentives to promote efficient energy usage.. ," n1064 Hence, these payments are more properly treated as grants, not as compensation. Accordingly, the GBC's and West Fraser's argument that we unlawfully countervailed compensation for services purchased by BC Hydro is misplaced.

n1064 See, e.g., GBC Primary QNR Response, at II-l.

Based on the change described above, the final program rate for West Fraser is 0.01 percent ad valorem.

Comment 59: Whether the Department Correctly Found That the Three BC Hydro Power Smart Programs Countervailed in the Preliminary Determination Are De Jure Specific

In the Preliminary Determination, the Department found each of the three BC Hydro Power Smart Programs to be de jure specific, on the basis that access to the subsidy is limited to certain enterprises or industries. n1065

n1065 See PDM at 65-67.

The GBC argues that the Department cannot reasonably conclude that the Energy Manager, Load Curtailment, and Incentives subprograms are specific to any industry or group of industries. Rather, the GBC states that the BC Hydro's Power Smart program, writ large, is available to each and every BC Hydro customer to incentivize energy conservation through DSM. n1066 According to the GBC, while making DSM incentives available across its customer classes, BC Hydro has logically tailored its DSM policies to meet the unique electricity demand profiles of its residential, commercial, and industrial customers. n1067 As a result, Power Smart has a number of subprograms, each of which is available to one or more customer segments. n1068 The GBC claims that BC Hydro's Power Smart program, as a whole, is available to the 1.9 million customers served by BC Hydro. n1069

n1066 See GBC Case Brief at 79.

n1067 Id.

n1068 Id.

n1069 Id. at 80.

Further, the GBC argues that in the case of the Energy Manager subprogram, the fact that the subprogram is only available to industrial customers that consume more than 10 GWh of electricity per year does not make it de jure specific. The GBC argues that BC Hydro does not limit the types of industrial customers at this level of energy consumption that may participate in the Energy Manager subprogram. n1070 Moreover, according to the GBC, data provided by BC Hydro demonstrate that the Energy Manager subprogram is widely used outside of the softwood lumber industry and thus, the Energy Manager subprogram is also not de facto specific. n1071

n1070 Id.

n1071 Id.

The GBC further contends that in the case of the Power Smart Load Curtailment Pilot subprogram, the Department incorrectly found the subprogram to be de jure specific because it is only available to industrial customers that are served at the transmission rate with a minimum of 5 MWs of curtailable load. The GBC argues that this rationale ignores the fact that BC Hydro offers capacity-focused demand side initiatives to its residential and commercial customers under other subprograms. n1072 Furthermore, the GBC argues that data provided by BC Hydro demonstrate that this subprogram has only been used outside of the softwood lumber industry. n1073

n1072 Id. at 82.

n1073 Id.

Lastly, in the case of the Incentives subprogram, the GBC argues that the Department incorrectly determined that the program is de jure specific to industrial customers consumers consuming of more than one GWh of electricity annually. According to the GBC, this finding ignores that Power Smart also offers other incentive subprograms to its other customer classes, e.g., the "Refrigerator Buy-Back" for residential customers and the Load Displacement incentives for commercial customers. n1074 The GBC further claims that that the data provided by BC Hydro demonstrate widespread usage of the industrial incentive subprograms outside of the softwood lumber industry. n1075

n1074 Id. at 83.

n1075 Id.

In light of the above, the GBC contends that the Department in its final determination should find that the BC Power Smart subprograms are neither de jure nor de facto specific.

The petitioner argues that record evidence supports the Department's conclusions that each of the subprograms countervailed in the Preliminary Determination are de jure specific. The petitioner asserts, with respect to the GBC's arguments related to the Energy Manager subprogram, that the Department addressed a similar argument in SC Paper from Canada -Expedited Review, in which the Department found the Energy Manager program to be de jure specific. n1076 The petitioner further argues that the GBC mischaracterizes the Department's analysis on the Power Smart Load Curtailment Pilot subprogram. According to the petitioner, in analyzing specificity, the Department properly focused on whether the subprogram under investigation meets the statutory requirement of specificity and not on separate eligibility requirements that may exist for other customers. n1077 Moreover, the petitioner asserts that the Department has consistently found that de jure specificity can and does exist when eligibility is explicitly limited to certain activities because "only the industries involved" in those activities are eligible. n1078 The petitioner claims that the same logic applies for the Power Smart Incentives subprogram. n1079

n1076 See Petitioner Rebuttal Brief atl24.

n1077 Id. at 125.

n1078 Id.

n1079 Id.

Department's Position: Based upon our analysis of the arguments submitted by the interested parties, we find no reason to change our specificity determinations that we made with respect to these subprograms in the Preliminary Determination. We continue to find the BC Power Smart subprograms to be de jure specific within the meaning of section 771(5A)(D)(i) of the Act. As an initial matter, we note that record evidence shows that BC Hydro operates multiple subprograms under the broader Power Smart program. n1080 While all the subprograms under the umbrella Power Smart program share the same overarching goals, each subprogram has distinct and separate eligibility criteria. n1081 In particular, as is relevant here, the record evidence shows that (1) eligibility for the Incentives subprogram is limited to industrial customers that consume more than 1 GWh of electricity annually; n1082 (2) eligibility for the Energy Manager subprogram is limited to industrial customers that use more than 10 GWh of electricity per year; n1083 and, (3) eligibility for the Load Curtailment Pilot subprogram is limited to industrial customers served at the transmission service rate with a minimum bid of 5 MW of curtailable load. n1084 Therefore, we disagree with the GBC that the Department must look at the Power Smart program as a whole, or consider other subprograms, in assessing the specificity of the Energy Manager, Load Curtailment, and Incentives subprograms.

n1080 See GBC Primary QNR Response, Part 1 at II-6, 8.

n1081 Id. at4.

n1082 See GBC Primary QNR Response, Part 1 at Exhibit BC-BH-3.

n1083 See SC Paper from Canada - Expedited Review IDM at 30.

n1084 See GBC Primary QNR Response, Parti at Exhibit BC-BH-3.

Under section 771(5A)(D)(i) of the Act, when an authority provides a subsidy and expressly limits access to that subsidy to an enterprise or industry, that subsidy is specific as a matter of law. As described above and in the Preliminary Determination, the subsidies that are provided by BC Hydro under each sub-program are expressly limited by law to enterprises that meet specific energy generation and consumption requirements, meaning that the GBC has established, by law, a limited group of enterprises that may receive grants from BC Hydro under these three Power Smart subprograms. The fact that the GBC may not have limited eligibility for these subprograms to specific industries, as the GBC contends, does not alter this conclusion.

Therefore, we continue to find that these subprograms are de jure specific under section 771(5A)(D)(i) of the Act. Having made a finding of de jure specificity under section 771(5A)(D)(i) of Act, we have not examined whether the subprograms are de facto specific under section 771(5A)(D)(iii) of the Act.

Comment 60: Whether Benefits Under the Load Displacement Component of the BC Hydro Power Smart Incentives Subprogram Were Tied to Non-Subject Merchandise

In the Preliminary Determination, the Department countervailed assistance that Canfor received under the Incentives subprogram of the broader BC Hydro Power Smart program. In calculating the benefit conferred upon Canfor under this subprogram, we attributed the benefit received by Canfor in the POI to its total sales in the POI and did not find the subsidy to be tied to nonsubject merchandise. n1085

n1085 See PDM at 67.

Canfor and the GBC argue that payment from BC Hydro was to reimburse Canfor for its expenditures related to Canfor's construction of a generator at its Chetwynd pellet plant. Canfor states that the Chetwynd pellet plant produces pellets, not subject merchandise. n1086 Therefore, according to Canfor, this payment was tied to non-subject merchandise pursuant tol9 CFR 351.525(b)(5)(i), and it was improper for the Department to attribute this payment to subject merchandise in the Preliminary Determination. n1087 Further, Canfor asserts that this payment cannot be attributed to subject merchandise on the basis of it being tied to the production of an input product pursuant to 19 CFR 351.525(b)(5)(ii). n1088 The Chetwynd pellet plant's power generator did not commence production of electricity until March 2016 (after the POI), so Canfor argues that the Chetwynd plant could never have supplied any electricity input to Canfor during the POI. n1089 Because the Chetwynd pellet plant could not have provided any electricity to Canfor's Chetwynd saw mill, Canfor argues that it provided no input that was primarily dedicated to the production of the downstream product, i.e. softwood lumber. n1090

n1086 See Canfor Case Brief at 38; see also GBC Case Brief at 84.

n1087 Id.

n1088 Id. at 39.

n1089 Id.

n1090 Id. at 40.

No other party provided comments or rebuttal comments on this issue.

Department's Position: Based upon our analysis of all the arguments submitted by Canfor and the GBC, we find no reason to alter our findings from the Preliminary Determination. Notwithstanding Canfor's and the GBC's arguments, we continue to find that it is appropriate to attribute the benefit received by Canfor in the POI to its total sales in the POI pursuant tol9 CFR 351.525(b)(3). Section 351.525(b)(5)(i) of the Department's ***regulations*** states that "(i]f a subsidy is tied to the production or sales of a particular product, the [Department] will attribute the subsidy only to that product." Consistent with the CVD Preamble, n1091 we have generally stated that we will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal. n1092 For example, to determine whether a grant is tied to a particular product, we examine the grant approval documents. n1093

n1091 See CVD Preamble, [*63 FR at 65402-65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1092 See, e.g., Washers from Korea IDM at Comment 7, pages 41-42; see also Refrigerators from Korea - Final IDM at41.

n1093 See CVD Preamble, [*63 FR at 65402-65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

There is no record evidence that this program is tied to production or sales of any particular product. In its initial questionnaire response, when asked whether the application or approval specified the merchandise for which assistance under the load displacement component of the Power Smart Incentives subprogram was to be provided, Canfor stated that "the application and approvals did not specify any particular merchandise for which this assistance was provided." n1094 The grant approval documents submitted by the respondents do not indicate any product restrictions. n1095 The GBC program description and guidelines indicate that the purpose of load displacement incentives was to encourage customers to construct and operate power generation facilities on their own sites. n1096 The GBC does not link the condition of the approval to a specific product. n1097

n1094 See Canfor Primary QNR Response, Part 1 at Exhibit C-2.

n1095 Id. at Exhibit C-1.

n1096 See GBC Primary QNR Response, Part 1 at II-5.

n1097 Id. at Exhibit BC-BCH-6.

The approval documents also do not restrict the benefit to the Chetwynd pellet plant only; rather the approval documents clearly state that the corporate entity, Canfor Forest Products Ltd., is the recipient of payment. n1098 In any case, the Chetwynd pellet plant is not a separate entity, but a part of our mandatory respondent, Canfor. n1099 Canfor is the entity that is incorporated and registered in BC and Canfor files its taxes as one corporate entity. n1100 Neither the statute nor our ***regulations*** provide for, or require, the attribution of a domestic subsidy to a specific entity within a firm. n1101 Therefore, Canfor and the GBC are misguided in concluding that because subsidies were provided to a division of a subject merchandise producer that itself does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise as contemplated by 19 CFR 351.525(b)(5).

n1098 See Canfor Primary QNR Response, Part 1 at Exhibit C-l.

n1099 See Canfor Case Brief at 38.

n1100 See Canfor Primary QNR Response, Part 1 at 7-10.

n1101 See, e.g., SC Paper from Canada IDM at 161; see also CFS from the PRC IDM at Comment 8.

For the reasons stated above, we find that the BC Load Displacement program is not tied to any particular product or to Canfor's Chetwynd pellet plant. Therefore, we continue to attribute the benefit received by Canfor in the POI under this subprogram to its overall operations and, accordingly, divide the benefit by its total sales in the POI, pursuant to 19 CFR 351.525(b)(3). Further, in light of this finding, Canfor's and the GBC's arguments that the Department cannot attribute the payment under this program to subject merchandise under the exception inl9 CFR 351.525(b)(5)(ii) for subsidies tied to the production of an input product are moot.

Comment 61: Whether the GNB's Reimbursement of Silviculture and License Management Expenses is Countervailable

In the Preliminary Determination, the Department found the reimbursement of both silviculture and license management expenses to be countervailable grants. We determined that the reimbursements provided were grants and constituted a financial contribution in the form of a direct transfer of funds from the government bestowing a benefit in the amount of the grants, within the meaning of sections 771(5)(D)(i) and 771(5)(E) of the Act. The GNB and JDIL argue that these payments represent a purchase, by the GNB, of services provided by JDIL, and that pursuant to Eurodif, and relying on Lumber IV., the purchase of services is not countervailable. n1102 The GNB additionally argues there is no evidentiary basis for the Department to find license management fees to be specific. n1103

n1102 See GNB Case Brief at 28-40; see also JDIL Case Brief at 3-8.

n1103 See GNB Case Brief at 34-36.

The petitioner asserts that the Department should not deviate from its determination that these programs are countervailable in the final determination. n1104

n1104 See Petitioner Rebuttal Brief at 136-139.

Department's Position: Although we agree with the GNB and JDIL that a government's purchase of services is not countervailable, we find unpersuasive the GNB and JDIL's arguments that the GNB's reimbursement of silviculture and license management expenses are the purchase of services, and thus not countervailable. The parties rely on Eurodif, in which the Federal Circuit held that the governmental purchase of services does not constitute a financial contribution, and is thus not countervailable. n1105 Beyond that holding in Eurodif, however, the case is not applicable to the Department's analysis in this case because the facts in Eurodif are different then the facts in this case. Eurodif addressed the issue of whether the delivery of both money and goods in exchange for a processed good constituted a purchase of goods or a purchase of services. n1106 Eurodif did not discuss the difference between a grant and a purchase of services. Lumber IV is also inapplicable. Furthermore,the parties' relianceon Lumber IV is misplaced, because in that proceeding, silviculture was not a separately alleged subsidy program for which the Department initiated an investigation, as it is here. Indeed, the province of New Brunswick was exempted from the investigation in Lumber IV. Thus, in Lumber IV, the Department did not make any determinations regarding silviculture or license management activities, particularly in New Brunswick. Instead, in Lumber IV, the Department was examining stumpage prices paid, on an aggregate basis, and the Department determined it was appropriate, depending on the province, to adjust these prices because the fees charged for stumpage either included silviculture or were offset to account for silviculture. However, the facts of this case demonstrate that the New Brunswick stumpage price does not include an amount for silviculture. n1107 Thus, we considered the silviculture and license management fees as a distinct program for this proceeding. Moreover, all decisions in an investigation must be based upon the information on the record of that investigation. Therefore, the decisions made within the instant case are based upon the record evidence of this investigation; not upon the information that might or might not have been on the record of Lumber IV.

n1105 See Eurodif at 1365, overturned on other grounds, [*555 U.S. 305 (2009).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4VG2-6G20-TXFX-123V-00000-00&context=)

n1106 Id. at 1364.

n1107 See GNS Primary QNR Response at Exhibit NS-8.

JDIL is the licensee on Crown timber licenses #6 and #7 (collectively referred to as License #7). JDIL or another Irving cross-owned company have been the licensee for License #6 since 1962 and for License #7 since 1981, and thus an Irving company has been a long-term leaseholder of the Crown lands from which it sources part of its input supply. n1108 At present, JDIL is under a 25-year FMA with the province. Under the CLFA, JDIL is obligated to perform basic silviculture and forest management obligations. Specifically, paragraph 38(2) states:

n1108 See JDIL Primary QNR Response at Exhibit STUMP-05.

The Minister

(a) shall reimburse the licensee for such expenses of forest management

as are approved in and carried out in accordance with the operating plan,

including expenses with respect to

i. pre-commercial thinning, …

iii. tree planting, …

subject to the ***regulations*** and the provisions of any agreement between

the licensee and the Minister, and

(b) shall compensate the licensee for other expenses of forest management

in accordance with the ***regulations***. n1109

n1109 Id. at Exhibit STUMP-04.

In accordance with the CFLA, JDIL's FMA defines basic silviculture and further specifies JDIL's requirement for both basic silviculture and licensee silviculture. n1110 In accordance with the FMA, basic silviculture is defined as the silvicultural activity required to produce the annual allowable harvest of timber as identified in paragraph 13.1. n1111 Licensee silviculture is defined as silvicultural treatments carried out at the expense of the licensee. n1112 Thus, the GNB is making a clear distinction between basic silviculture which is required and for which the GNB provides funds, and licensee silviculture, which is beyond basic silviculture, as described in the CLFA and is to be performed at the expense of the licensee.

n1110 Id. at Exhibit STUMP-10.

n1111 Id.

n1112 Id.

In the Preliminary Determination, the Department found that basic silviculture and forest management activities provide countervailable subsidies because the GNB relieved JDIL of expenses incurred through a direct transfer of funds. The FMA goes on to stipulate that JDIL "shall carry out basic silviculture," n1113 "the Minister will fund the basic silvicultural program" n1114 and JDIL's "obligations.. .will correspond to the level of basic silviculture funding provided by the Minister." n1115 Likewise the FMM, which forms part of the FMA, further outlines the specific responsibilities of the licensee and the Crown and defines license management fees as the "reimbursement to licensees for specific requested management services undertaken at the request of, and on behalf of DNR." n1116

n1113 Id. at para. 13.1.

n1114 Id. at para. 13.3.

n1115 Id.

n1116 Id. at Exhibit STUMP-11

The assertion that JDIL was not fully reimbursed for either the silviculture or the forest management activities it performed is immaterial. This notion that the payments received by JDIL from the GNB do not cover JDIL's actual expenses for both silviculture and forest management activities does not negate the benefit from the payments received. n1117 These are activities that involve the renewal and maintenance of forestry land, i.e., the management of JDIL's input and supply chain, and which JDIL would undertake even in the absence of the reimbursements. JDIL's arguments that as a licensee it has no right of possession to the land, or that if JDIL did not perform these activities the responsibility would ultimately lie with the GNB, are an attempt by JDIL to parse words, and its arguments remain unavailing. Despite JDIL's assertion that a licensee has no right of possession of Crown Lands, the fact remains that JDIL, as aforementioned, has been a licensee with access to Crown Land for over half a century. As stated, the facts of this investigation indicate that it is JDIL, not the GNB, that has the mandate and ultimate responsibility to carry out basic silviculture and license management activities. As such, JDIL and the GNB mischaracterize the reimbursements and misconstrue the nature of the assistance being provided. Indeed, the manner in which the payments were provided, as reimbursements for obligatory expenses incurred, further indicates that the payments were provided to alleviate the financial burden to JDIL.

n1117 We note that JDIL's FMA para. 13.4 states that it "may, at its own expense … carry out licensee silviculture in addition to basic silviculture and the Company.. .shall be the exclusive beneficiaries (on a prorated basis) of any immediate or future increase to the annual allowable harvest of timber as a result of such silvicultural treatments."

The GNB also challenges the Department's specificity finding for license management fees. In the Preliminary Determination, we found this program to be specific in accordance with section 771(5A)(D)(i) of the Act, because the funding is provided to a specific enterprise or industry -those who manage sublicenses under FMAs. The GNB contends that the program is not specific, arguing that these enterprises are simply in the most efficient position to perform license management activities. However, any reason the GNB may have for limiting this program to certain recipients is immaterial to our analysis. The fact remains that these reimbursements are limited only to license holders, and although the license holders may be in a more convenient position to fulfill the requirements to receive the grant payments than others, those license holders' efficiency is irrelevant to whether this program is limited, and thus, specific. In fact, by arguing that certain enterprises are more efficient position than others to perform license management activities, it appears that the GNB is recognizing the limited availability, and, thus, specificity, of this program.

In short, the GNB is providing JDIL with long-term, 25 years or more, access to the required input that allows it to operate as a business; does not charge it a fee for this long-term supply access; and then both the GNB and JDIL argue that, in addition to providing JDIL with a rent-free 25 year-long lease, the GNB should also provide JDIL with additional money to help it maintain the quality of its input supply. As such, the assistance provided constitutes a direct transfer of funds from the GNB to JDIL, in the form of a grant, and not the purchase of services by the government. As discussed above, the respondents have provided no credible information or argument that this government action does not provide a benefit under the CVD law to JDIL. Therefore, because the GNB provides reimbursements to JDIL for costs it incurs in the course of managing its input and ensuring the efficient operation of its supply chain, i.e., activities it was obligated to undertake as part of its operations, we continue to find that these programs provide a financial continuation in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act.

Finally, while we disagree with the GNB's and JDIL's assertions regarding the nature of these silviculture and license management expense reimbursements, we agree with JDIL's argument that the benefits under the silviculture program should be the total amount JDIL received from the GNB, net of the HST. The record indicates that HSTs are a value added tax, not revenue. n1118 As such, we have excluded HST from JDIL's benefit under the silviculture program for this final determination.

n1118 See, e.g., JDIL Supp QNR 1 Response at Exhibit Supp.-08.

Comment 62: Whether the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund Are De Facto Specific

In the Preliminary Determination., the Department calculated a countervailable subsidy rate for JDIL's receipt of funds under the New Brunswick Workforce Expansion Program and the New Brunswick Youth Employment Fund. The GNB argues that it took no actions to limit the availability of these programs, and that out of more than 33,000 corporate tax payers in the province, the fact that only a few companies used the programs is based entirely on the taxpayers' own circumstances and decisions. n1119 The petitioner argues that the de facto specificity test is designed to measure the widespread use of a subsidy throughout an economy, and that the Department was correct in finding the use of these programs limited to a small number of users during the POI. n1120

n1119 See GNB Case Brief at 45-47.

n1120 See Petitioner Rebuttal Brief at 125-129.

Department's Position: Consistent with our past practice, n1121 we continue to find these programs to be de facto specific under section 771(5A)(D)(iii)(I) of the Act. As stated in the SAA, the specificity test is to function as an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy. n1122 The SAA also states that in determining whether the number of industries using a subsidy is large or small, the Department can take into account the number of industries in the economy in question. n1123 Because, under section 771(5A)(D)(iii)(I) of the Act, a program is de facto specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department will take into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is large or small. n1124 Thus, we have followed the instructions of the SAA in analyzing whether this program is de facto specific. The number of enterprises that received this tax credit program is limited to a small number of enterprises out of approximately 33,000 potential corporate tax filers. n1125 In Steel Plate from Korea., the Department found an electricity discount program to be de facto specific when distributed to a small number of enterprises relative to the total number of enterprises, and stated: "[g]iven the data with respect to the small number of companies which received… electricity discounts during the POI, we determine that the… program is de facto specific under section 771(5A)(D)(iii)(I) of the Act." n1126 Therefore, in accordance with section 771(5A)(D)(iii)(I) of the Act and past Department practice, we continue to find this program to be de facto specific. n1127

n1121 See SC Paper from Canada - Final Determination IDM at Comment 28.

n1122 See SAA at 929.

n1123 See SAA at 929, 931.

n1124 See CRS from Korea IDM at Comment 13.

n1125 See GNB Case Brief at 45-47; see also id. for the actual number of enterprises that used the program, which is business proprietary information.

n1126 See Steel Plate from Korea, 64 FR at 15535.

n1127 See, e.g., Corrosion-Resistant Steel from Korea accompanying IDM at 16.

In arguing that these two programs are not de facto specific under section 771(5A)(D)(iii)(I) of the Act, the GNB has made a number of incorrect statements with respect to both the statute and the analysis of de facto specificity. The GNB argues that the program is not specific because it is generally available to all companies in the province, that it took no action to limit access to the programs, and that only a limited number of companies decided to use the program. However, the GNB has misconstrued the statute. Although "access" to a subsidy is a factor in the analysis of de jure specificity under section 771(5A)(D)(i) of the Act, under the de facto analysis required under section 771(5A)(D)(iii)(I) of the Act, the Department is to analyze the actual number of recipients of the investigated program. Furthermore, under the specificity test as set forth in the SAA, the Department is required to determine whether the subsidy program is "widely used throughout an economy." n1128 Accordingly, the number of companies which have "access" to the program is irrelevant under the de facto specificity analysis.

n1128 See SAA at 929.

Comment 63: Whether the PCIP Is Countervailable

In the Preliminary Determination, the Department found the PCIP to be countervailable because it was de jure specific, and because Resolute reported receiving a payment during the POI in the form of a reimbursement under the PCIP. n1129 The GOQ argues that the Department failed to demonstrate that the reimbursement was a benefit under section 771(5)(E) of the Act. n1130 Under the PCIP, the MFFP requires harvesters to carry out partial cuts, which increases harvesting costs by prohibiting harvesters from using more efficient clear-cutting methods. n1131 By law, the PCIP program reimburses no more than 90 percent of the additional cost resulting from the partial cut prescriptions. n1132 Resolute reported the reimbursements it received under the PCIP in response to the Department's "other assistance" question. n1133 Resolute argues that the partial reimbursements it received under the PCIP were for performing costly work that would otherwise be unnecessary; therefore, it does not consider the reimbursements to be a form of assistance or a grant. n1134 According to the GOQ, harvesters receive no benefit under the program because the reimbursements are for costs that are incurred as a result of specific government action; therefore, the Department should find the program not countervailable. n1135

n1129 See PDMat71.

n1130 See GOQ Case Brief at61.

n1131 Id. at 63; see also Resolute Case Brief at 50.

n1132 See GOQ Case Brief at 62-63; see also Resolute Case Brief at 50-51.

n1133 See Resolute Case Brief at 14-17.

n1134 Id. at 17.

n1135 See GOQ Case Brief at 63.

The petitioner argues that the GOQ is offsetting a legally mandated cost that Resolute would otherwise be required to incur in its normal course of business; therefore, the reimbursements constitute a benefit under section 771(5)(E) of the Act. n1136 In addition, the petitioner asserts that there is no statutory requirement that a subsidy fully offset a cost incurred by a respondent for it to be found countervailable. n1137

n1136 See Petitioner Case Brief at 146.

n1137 Id. atl59.

Department's Position: We agree with the petitioner that the GOQ is offsetting a cost that Resolute is legally required to incur in its normal course of business. As the landowner and steward of public forest areas, the GOQ requires harvesters who hold TSGs to perform various reforestation and land stewardship activities in order to maintain the long-term health and sustainability of forest areas. n1138 Under the SFDA, the GOQ requires TSG-holders to perform "other forest development activities," which includes partial cuts, in which a harvester is limited to removing no more than 50 percent of the volume of a harvest stand. n1139 The GOQ mandates partial cuts on certain harvest stands in order to "encourage natural regeneration of forest areas without the need to replant.. ," n1140 During the POI, Resolute secured a significant proportion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG-holders under the SFDA, including partial cuts on certain harvest stands. n1141

n1138 The SFDA prohibits "any cutting without regeneration and soil protection" when harvesting standing timber on Crown land. See GOQ Primary QNR Response at Exhibit QC-STUMP-22 at 60.

n1139 Id. at 116 and 119-120.

n1140 Id. at QC-OTHER-18; see also GOQ Case Brief at 62.

n1141 See Resolute Primary QNR Response, Part 2 at Exhibit RESB-16; see also Resolute Supp QNR 6 Response at Exhibits RESB-1S-3, RESB-1S-4, RESB-1S-5, and RESB-1S-6; see also Resolute Primary QNR Response, Part 2, Correction at Exhibit RESB-16.

The GOQ argues that "reimbursements under the PCIP cover less than the full cost associated with the partial cut restrictions imposed by Quebec on public lands, [therefore] harvesters are not - and cannot be - fully compensated for the costs associated with the partial cut restrictions.. ," n1142 However, the fact that Resolute received a partial reimbursement does not negate the fact that a benefit was received. n1143

n1142 See GOQ Case Brief at 63.

n1143 See, e.g., discussion of benefit at page 65361 of the CVD Preamble.

Resolute received payments in the form of reimbursements under the PCIP, which partially offset a legally required activity; therefore, we determine that this program provides a benefit to Resolute under section 771(5)(E) of the Act, and that the benefit exists in the amount of reimbursements received by Resolute, pursuant to 351.504(a). As a result, we determine that this program is countervailable.

For the Department's response to Resolute's arguments regarding the "other assistance" question, please see Comment 5.

Comment 64: Whether the Federal and Provincial SR&ED Tax Credits Are Specific

In the Preliminary Determination, the Department found the SR&ED tax credits provided by the federal government and the provincial governments of Alberta, British Columbia, Manitoba, New Brunswick and Quebec to be de facto specific, in accordance with section 771(5A)(D)(iii)(I) of the Act, based on the number of recipients that received SR&ED tax credits compared to the total corporate tax filers in the country and in each province. n1144 Respondents argue that SR&ED tax credits are automatically available to all corporations that carry out qualifying SR&ED activities and are not limited to any particular enterprise or industry. n1145

n1144 See PDM at 74-78 and 83.

n1145 See West Fraser Case Brief at 64-67, see also GBC Case Brief at 100-101; see also GOA Case Brief at 74-75; see also GOM Case Brief at 3-4; see also JDIL Case Brief at 39-42; see also GOC Case Brief at 17-18.

Respondents argue further that the Department should not have analyzed specificity by looking at the percentage of users relative to total taxpayers, but rather based on the absolute number of enterprises using the program. n1146 The GOC and GOA assert that if the Department continues to evaluate percentages instead of the overall number of users of the SR&ED credit, it should reopen the record to obtain additional information for use in its numerator and denominator. In particular, the GOC and GOA argue that because not all corporations would be expected to purchase depreciable equipment in each year, the numerator should be the cumulative number of corporations that used the SR&ED program over a number of years in the numerator. And because not all corporations are engaged in research and development, only those that are should be included in the denominator. n1147

n1146 See West Fraser Case Brief at 64-67, see also GOA Case Brief at 74-75; see also GOM Case Brief at 3-4; see also GOC Case Brief atl7-18.

n1147 See GOC Case Brief at 17-18; GOA Case Brief at 75-76.

The petitioner argues that the Department found that actual users of the SR&ED program constituted a very small percentage of eligible users. According to the petitioner, subsidy programs with such low usage rates cannot be considered to be widely used, and the fact that various governments did not intend to restrict access to any particular industry or enterprise is irrelevant. Further, the petitioner asserts that the fact that the subsidy programs at issue may have neutral or objective eligibility criteria does not preclude the Department from evaluating whether there is de facto specificity despite those criteria. n1148

n1148 See Petitioner Rebuttal Brief at 126-129.

Department's Position: As stated in the SAA, the specificity test is an initial screening mechanism to winnow out only those foreign subsidies which are truly broadly available and widely used throughout an economy. n1149 The specificity test is not, however, "intended to function as a loophole through which narrowly [focused] subsidies . . . used by discrete segments of an economy could escape the purview of the [countervailing duty] law." n1150 The SAA also states that in determining whether the number of industries using a subsidy is large or small, the Department can take into account the number of industries in the economy in question. n1151 Because, under section 771(5A)(D)(iii)(I) of the Act, a program is de facto specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department reasonably takes into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is actually large or small. n1152 Thus, we have followed the instructions of the SAA and our practice in determining whether this program is de facto specific, and we disagree that we were required to analyze only the absolute number of users under section 771(5A)(D)(iii)(I) of the Act.

n1149 See SAA at 930.

n1150 Id.

n1151 Id. at 931.

n1152 See CRS from Korea IDM at Comment 13.

In this case, the Department considered whether the recipients were limited in number on an enterprise basis. The number of enterprises that received the federal tax credit is limited to 19,490 enterprises out of about 1,940,000, or about 1 percent of the potential corporate tax filers; 1,559 enterprises out of322,500 (0.48 percent) in Alberta; and 150 enterprises out of31,400 (0.48 percent) in New Brunswick. n1153 Usage in British Columbia, Quebec, and Manitoba is similarly limited. n1154

n1153 See GOC Etal Primary QNR Response at Exhibit GOC-CRA-SRED-4; see also GOC Etal Supp QNR 3 Response at GOC-SUPP2-1; see also GOA Primary QNR Response at Exhibit AB-SRED-5; see also, GOC Etal Supp QNR 2 Response at GOC-SUPP2-1.

n1154 See West Fraser Preliminary Calculations Memorandum, for the number of companies that were approved for assistance in BC under this program; see also GOC Etal Supp QNR 2 Response at GOC-SUPP2-1 and GBC Primary QNR Response Part 1 at Volume IV Exhibit BC-OA-6. See Tolko Preliminary Calculation Memorandum for the number of companies that were approved for assistance in Manitoba under this program; see also, GOC Etal Supp QNR 2 Response at GOC-SUPP2-1. For Quebec, see GOC Etal Supp QNR 1 Response at Exhibit QC-Supp-Other-59 and GOC Etal Supp QNR 2 Response at GOC-Supp2-l.

The respondents claim that the fact that the number of users that received this tax credits is limited reflects only that these companies conducted eligible research, not that the Canadian Revenue Agency limited the recipients. In addition, they maintain there was no predominant user of this tax credit. However, section 771(5A)(D)(iii)(I) of the Act does not require the administering authority to actively limit the program. Rather, it states that a program is specific if the "actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number." Nor does a finding of specificity under section 771(5A)(D)(iii)(I) of the Act depend on the fact that certain enterprises or industries were the predominant users of the program. Rather, predominant use is addressed by section 771(5 A)(D)(iii)(II) of the Act, and is not the basis upon which the Department reached its specificity determination with respect to this program. n1155 Moreover, as set forth under 19 CFR 351.502(a), in determining whether a subsidy is de facto specific, the Department will examine the factors contained in section 771(5A)(D)(iii) of the Act sequentially in order of appearance. If a single factor warrants a finding of specificity, the Department will not undertake further analysis.

n1155 See section 771(5A)(D)(iii) of the Act (providing that a program is de facto specific if "one or more" of the enumerated factors exist).

JDIL argues that the Department previously found the SR&ED program not specific in OCTG from Canada and Lumber II and should continue that finding in this investigation. n1156 The cases referenced by JDIL predate the URAA and, thus, predate the statutory provisions that the Department is applying in this investigation. As explained above, under the statutory provision we are evaluating in this investigation, section 771(5A)(D)(iii)(I) of the Act, a program is de facto specific if the actual recipients of the subsidy on an enterprise basis are limited in number, the Department will take into account the number of enterprises in the economy in question to determine whether the number of enterprises using a subsidy is large or small. n1157 As described above, the Department finds the actual recipients are limited in number on an enterprise basis and therefore the program is de facto specific.

n1156 See JDIL Case Brief at 41.

n1157 See CRS from Korea IDM at Comment 13.

We also disagree with West Fraser, the GOC, and the GOM that the Department's specificity analysis for this program is inconsistent with its prior practice. First, we note that the Department conducts its de facto specificity analysis under section 771(5A)(D)(iii) of the Act on a case-by-case basis. As the CAFC stated, specificity "must be determined on a case-by-case basis taking into account all facts and circumstances of a particular case." n1158 West Fraser and the GOM cite to Royal Thai Government and Live Swine from Canada to argue that the Department found usage of programs by companies in the hundreds or thousands to be not specific. n1159 However, those determinations did not indicate the potential users of the programs. In this investigation, the record evidence reflects that out of the total number of corporate tax filers, only between 0.48 and 1 percent of corporate tax filers in each province and nationally used the program.

n1158 See AK Steel.

n1159 See West Fraser Case Brief at 65-67 and GOM Case Brief at 4.

Finally, the Department disagrees with the GOC's argument that the Department should reopen the record to obtain additional information for the purpose of re-analyzing specificity. This argument presupposes that the Department's methodology was unreasonable; as we describe in detail above, the Department is not bound to follow a particular formula in analyzing specificity and considering the number of users relative to total corporate taxpayers is reasonable and consistent with our prior practice. n1160 Further, the GOC and the GOA's argument that the Department should have limited its denominator to companies engaged in research and development is in effect an assertion that we should gauge whether the actual number of recipients is limited based on only the enterprises that have been targeted by the government as potential subsidy recipients. The respondents have provided no legal or case support for such a departure from the specificity test. As previously stated, to determine whether a program is not specific, the SAA explicitly states that the Department must determine that the subsidy is broadly available and widely used throughout an economy. n1161

n1160 See CRS from Korea IDM at Comment 13.

n1161 See SAA at 929; see also SC Paper - Expedited Review IDM at Comment 28.

Comment 65: Whether the Department Should Countervail the Federal and Provincial SR&ED Tax Credits That Are Purportedly Tied to Non-Subject Merchandise

In the Preliminary Determination, the Department countervailed SR&ED tax credits provided by the federal and various provincial governments in Canada. n1162 Canfor and West Fraser argue the Department overstated the benefit to the federal and provincial SR&ED program by including tax credits tied to specific projects related to non-subject merchandise. n1163 The petitioner counters the Department properly attributed tax subsidy benefits because it generally treats tax subsidies as untied because the benefits from these subsidies decrease a corporation's overall tax burden. n1164

n1162 See PDM at 74-75 (GOC), 75-76 (GOA), 77 (GBC), 78 (GOM), 83 (GOQ).

n1163 See Canfor Case Brief at 62-64; see also West Fraser Case Brief at 67-70.

n1164 See Petitioner Rebuttal Case Brief at 133-134 (citing Washers from Korea IDM at Comment 7, and Granite Products from Italy at "Tax Concessions Under Law 614," and CRS from Korea IDM at Comment 14).

Department's Position: We disagree with Canfor and West Fraser's claim that the record reflects that certain SR&ED tax credits are tied to non-subject merchandise. Under 19 CFR 351.525(b)(5)(i), "if a subsidy is tied to the production or sale of a particular product," the Department "will attribute the subsidy only to that product." To determine whether a subsidy is "tied," the Department's focus is on "the purpose of the subsidy based on information available at the time of bestowal" (that is, when the terms for the provision are set), and not on how a firm has actually used the subsidy. n1165 Thus, under our tying practice, a subsidy is tied to particular products or operations only if the bestowal documents'e.g., the application, contract or approval'explicitly indicate that an intended link to the particular products or operations was known to the government authority and so acknowledged prior to, or concurrent with, conferral of the subsidy. n1166

n1165 See CVD Preamble, [*63 FR at 65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1166 [*Id. at 65402;*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) see also CRS from Korea IDM at Comment 14 and Solar Cells from PRC IDM at Comment 13.

The record indicates no such evidence of tying. Instead, Canfor and West Fraser cite to a list of eligible SR&ED expenditures in their tax returns, and claim that certain of the SR&ED tax credits were earned for projects related to non-subject merchandise. n1167 However, we find that this information does not indicate that the federal and relevant provincial governments' decisions to bestow the tax credit were contingent upon research and development being conducted for certain merchandise, to the exclusion of subject merchandise. Nor has West Fraser or Canfor cited any evidence that the SR&ED tax credits can only be claimed for non-subject merchandise. Furthermore, these tax credits reduce West Fraser's and Canfor's overall tax burden. As such, there is no basis to find that the benefits are tied to any merchandise at the point of approval or bestowal. Thus, we continue to find benefits received under the SR&ED tax credits program to be untied subsidies that are attributable to the total sales of Canfor and West Fraser, as provided under 19 CFR 351.525(b)(3).

n1167 See West Fraser Case Brief at 67-70.

Comment 66: Whether the Department is Using the Correct Applicable Tax Rate for ACCA for Class 29 Assets

In the Preliminary Determination, the Department calculated the benefit from the ACCA for Class 29 Assets by, first, calculating the difference between the taxes that the recipient paid and the taxes that it would have paid absent the ACCA for Class 29 Assets program, and then multiplying this difference by the federal corporate tax rate of38 percent. n1168 Instead of the 38 percent rate, Canfor argues that the Department should calculate the benefit using the 26 percent corporate tax rate that applies to Canfor, while JDIL argues that the Department should use the 27 percent corporate tax rate applicable to JDIL. n1169 The GOC also argues that the Department used an overstated federal income tax rate to calculate the benefit. n1170 The petitioner claims that Canfor and JDIL's applicable tax rate claims are incorrect and the Department should continue to use the 38 percent corporate tax rate to calculate the benefit from this program. n1171

n1168 See PDMat72.

n1169 See Canfor Case Brief at 59; see also JDIL Case Brief at31-32.

n1170 See GOC CaseBriefatl5.

n1171 See Petitioner Rebuttal Brief at 152-153, footnote 510.

Department's Position: The GOC and Canfor state that 38 percent is the basic rate of federal income tax. n1172 However, we verified that the 38 percent base tax rate is first reduced by l0 percentage points for all corporate tax payers under Article 123(1) of the Canadian Income Tax Act, n1173 and then further reduced tol5 percent under Article 123.4(2) for all corporate tax payers. n1174 Therefore, the actual federal corporate income tax rate applied to corporate income tax returns filed during the POI isl5 percent. We also verified that the British Columbia provincial tax rate is ll percent, which, when combined with the federal income tax rate of l5 percent, results in a final applicable income tax rate of 26 percent for Canfor. n1175 A review of Canfor's tax return illustrates the applications of these provisions of the Income Tax Act and the BC provincial tax. n1176

n1172 See GOC Etal Supp QNR 1 Response at Exhibit GOC-SUPP1-GEN1; see also Canfor Case Brief at 60; see also Canfor Verification Exhibits at Exhibit 7.

n1173 Id.

n1174 Id.

n1175 Id.

n1176 See Canfor Primary QNR, Part 1 at Exhibit 23; see also Canfor Case Brief at 60-61.

Similarly, JDIL explained that the federal income tax rate is 15 percent after the reductions applicable under Articles 123(1) and 123.4(2) of the Income Tax Act. n1177 In New Brunswick, the provincial tax rate is 12 percent. n1178 Thus, we verified that JDIL's corporate tax rate is 27 percent. n1179

n1177 See JDIL Case Brief at 32; see also JDIL Verification Report at 12.

n1178 Id.

n1179 Id; see also JDIL Primary QNR, Part 1 at Exhibit JDIL-04.

The petitioner claims that we should continue to use the 38 percent federal corporate tax rate, as we did in SC Paper from Canada - Expedited Review. n1180 However, in SC Paper from Canada -Expedited Review, we used the 38 percent corporate tax rate because J.D. Irving failed to substantiate its claim that further reductions applied under the Income Tax Act with record evidence; n1181 in the absence of such evidence, the Department relied on the 38 percent federal corporate tax rate, as shown on J.D. Irving's official tax form, to calculate the benefit for the ACCA for Class 29 Assets program. n1182 By contrast, in this investigation, Canfor has provided the statutory provisions that underlie the reductions, and has explained how those reductions affect the federal tax rate applicable to all corporate tax filers in Canada. n1183 Additionally, Canfor provided record evidence listing all provincial tax rates. n1184 Further, Canfor identified the reductions on its tax return. n1185 The same is true for JDIL: the record contains the statutory provisions that underlie the reductions, JDIL provided evidence on the record of its provincial tax rate, and JDIL identified the reductions on its tax return. Thus, for purposes of this final determination, we find that the record demonstrates that for Canfor (and the other respondents incorporated in BC), a tax rate of 26 percent, and for JDIL, a tax rate of 27 percent, are appropriate for purposes of calculating the benefit provided by the ACCA for Class 29 Assets program. n1186

n1180 See SC Paper from Canada - Expedited Review IDM at 123.

n1181 Id.

n1182 Id.

n1183 See Canfor Verification Exhibits at Exhibit 7; see also Canfor Verification Report at 22; see also Canfor Primary QNR, Part 1 at Exhibits 23 and A-2.

n1184 See Canfor Verification Exhibits at Exhibit 7.

n1185 Id.; see also Canfor Verification Report at 22; see also Canfor Primary QNR, Part 1 at Exhibits 23 and A-2.

n1186 Id.; see also GOC Etal Supp QNR 1 Response at Exhibit GOC-SUPP1-GEN1; see also JDIL Case Brief at 32; see also JDIL Verification Report at!2.

Comment 67: Whether the Department Should Use An Alternative Methodology for Calculating the Benefit of the ACCA for Class 29 Assets

In the Preliminary Determination, the Department calculated the tax savings under the ACCA for Class 29 Assets program by determining the difference, over a three-year period, between the tax deduction from the Class 29 accelerated depreciation program and the tax deduction from the Class 43 standard rate of depreciation. n1187 Canfor and JDIL argue that we should instead compare the two asset classes going back to 2007, the year in which the Class 29 program was implemented. n1188 The petitioner claims that the Department should continue to use the three-year period it used in the Preliminary Determination, n1189

n1187 See PDMat72.

n1188 See Canfor Case Brief at 55-58; see also JDIL Case Brief at31.

n1189 See Petitioner Rebuttal Brief at 148-152.

Department's Position: The amount of depreciation under Class 29 and Class 43 assets can be claimed as a deduction from taxable income. n1190 Although comprised of the same kinds of capital assets, the two asset classes are depreciated under different methodologies. Class 43 assets are continually depreciated on a declining-balance basis in which the asset is not fully depreciated until it is disposed of. n1191 Class 29 assets, on the other hand, are fully depreciated on a straight-line basis over a three-year period. n1192 Absent the ACCA for Class 29 Assets program, all assets eligible for the program would have been depreciated under the standard Class 43 asset depreciation methodology. Because, under the program, an eligible manufacturing asset can be classified as either a Class 29 or Class 43 asset, at the option of the taxpayer, we measured the tax benefit by measuring the value of Class 29 depreciation compared to what the value of the depreciation of the same assets would have been if those assets had been classified as Class 43 assets. n1193 As we did in the final determination of SC Paper from Canada - Expedited Review, for the Preliminary Determination, we calculated a benefit using this methodology over a three-year period. We used a three-year comparison period because the ACCA for Class 29 Assets program provides for full depreciation of those assets over a three-year period, and, thus, the assets comprising the Class 29 deduction claimed during the POI entered the company's books and records during the POI tax year and the prior two tax years. Accordingly, we preliminarily determined that the three-year period was appropriate for measuring the difference between the taxes the company paid under the program, and the taxes the company would have paid absent the program. n1194

n1190 See PDMat72.

n1191 See Canfor Case Brief at 56.

n1192 Id. at 55.

n1193 See PDM at 72; see also 19 CFR 351.509(a)(1).

n1194 See SC Paper from Canada - Expedited Review IDM at Comment 34.

Canfor and JDIL argue that we should have calculated a benefit using a comparison period beginning in 2007, the year that the program was implemented. n1195 Canfor stated that this longer period is necessary to incorporate the total effect of the program. n1196 In addition, Canfor argued that because Class 43 assets depreciate over a much longer period, this longer period takes into account all of the assets historically classified as Class 29 as though they were classified as Class 43 assets that would still be depreciating during the POI in the absence of the program. n1197

n1195 See JDIL Case Brief at31; see also Canfor Case Brief at 55-59.

n1196 See Canfor Case Brief at 56.

n1197 Id.

Because our benefit calculation must necessarily consider the tax benefit obtained in the absence of the ACCA for Class 29 Assets program in accordance with 19 CFR 351.509(a)(1), the focus of this calculation is only the Class 29 assets that are included in the calculation of the tax deduction claimed during the POI. The Department's ***regulations*** require us to focus this program's calculation on the POI because as a tax deduction program, it has recurring benefits that require annual consideration under 19 CFR 351.524(c)(1). Both the calculation methodology we used in the Preliminary Determination and Canfor's proposed alternative methodology rely upon the Class 29 acquisition amounts shown in Canfor's federal tax returns.

However, Canfor proposes that we use the Class 29 acquisition amounts for years prior to 2012 (i.e., three or more years prior to our POI) to calculate the alternative depreciation and resulting tax deduction available under Class 43. n1198 But because Class 29 assets are depreciated in three years, Class 29 assets acquired prior to2012 are not included in the tax deduction claimed under the ACCA for Class 29 Assets program during the POI, and therefore should not be included in the benefit calculation. Considering assets purchased before 2012 would introduce an element of distortion into the calculation by overstating the Class 43 depreciation. This distortion would occur because of the difference in the depreciation period for Class 29 and 43 assets. Class 29 assets purchased before 2012 would have fully depreciated prior to the POI, due to their three-year depreciation period, and thus the ACCA for Class 29 Assets program does not confer a benefit on the respondents during the POI for Class 29 assets purchased prior to 2012. As discussed above, in our calculation and Canfor's proposed alternative calculation, the Class 29 assets are hypothetically considered to be Class 43 assets for the purpose of calculating benefit during the POI. In contrast, Class 43 assets do not have a time limit on their depreciation period, and, thus, Class 43 assets purchased prior to2012 could still be depreciating during the POI. Thus, were we to consider Class 29 assets from prior to2012 to be hypothetical Class 43 assets, we would include depreciation in the POI comparison period carried over from years before 2012, which would artificially inflate the Class 43 assets' hypothetical depreciation in relation to the Class 29 assets' actual depreciation. And, because we are calculating the respondents' benefit under the program by dividing the actual value of their Class 29 depreciation by the hypothetical value of the depreciation of the same assets had those assets had been classified as Class 43 assets, artificially inflating the denominator would distort our calculation of benefit. Therefore, for purposes of this final determination, based on the three year-depreciation schedule available under Class 29, we determine that the proper comparison period is three years.

n1198 See Canfor Preliminary Calculation Memorandum; see also Canfor Verification Exhibits at Exhibit 7.

Comment 68: Whether the ACCA for Class 29 Assets Program is Specific

In the Preliminary Determination, the Department preliminarily determined that the ACCA for Class 29 Assets program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act because, as a matter of law, eligibility for the program is expressly limited to certain industries. n1199 The GOC, JDIL, and West Fraser argue that the program is neither de jure nor de facto specific because it only excludes a few activities and is available to all qualified Canadian industries. n1200 The petitioner maintains that the Department was correct to preliminarily determine that ACCA for Class 29 Assets program is de jure specific. n1201

n1199 See PDMat72.

n1200 See GOC Case Brief at3-13; see also JDIL Case Brief at 29-30; see also West Fraser Rebuttal Brief at 4-6.

n1201 See Petitioner Rebuttal Brief at 110-116.

Department's Position: Class 29 assets are machinery used in manufacturing or processing operations. Any taxpayer that acquired these assets after March 18, 2007, and before 2016, can claim a tax deduction under the ACCA for Class 29 Assets program. Under this allowance, Class 29 assets can be fully depreciated at an accelerated rate, over three years, and the amount of depreciation can be claimed as a deduction to reduce the taxpayer's taxable income. n1202

n1202 See GOC Etal Primary QNR Response at CRA-56-57.

Canada's Income Tax Act provides for deductions from taxable income for the capital cost of property. n1203 Canada's ITR further specifies and defines Class 29 as an allowable deduction. n1204 The ITR defines manufacturing and processing, for which Class 29 deductions are permitted, by excluding the following:

for the purpose of… Class 29… "manufacturing or processing' does

not include: (a) farming or fishing; (b) logging; (c) construction;

(d) operating an oil or gas well or extracting petroleum or natural gas

from a natural accumulation thereof; (e) extracting minerals from a

mineral resource; (f) processing of (i) ore, other than iron ore or tar

sands ore, from a mineral resource to any stage that is not beyond the

prime metal stage or its equivalent, (ii) iron ore from a mineral

resource to any stage that is not beyond the pellet stage or its

equivalent, or (iii) tar sands ore from a mineral resource to any stage

that is not beyond the crude oil stage or its equivalent; (g) producing

industrial minerals; (h) producing or processing electrical energy or

steam, for sale; (i) processing natural gas as part of the business of

selling or distributing gas in the course of operating a public utility;

(j) processing heavy crude oil recovered from a natural reservoir in

Canada to a stage that is not beyond the crude oil stage or its

equivalent; or (k) Canadian field processing. n1205

n1203 Id. at Exhibit GOC-CRA-ACCA-1.

n1204 Id.

n1205 Id.

In the Preliminary Determination and in SC Paper from Canada - Expedited Review, we found this program to be de jure specific because the ITR excluded certain industries from the definition of manufacturing and processing, and thus, excluded these industries from using the Class 29 program. n1206 In response, JDIL and West Fraser argue that the ACCA for Class 29 Assets program is not limited, but rather is available to all taxpayers that purchased manufacturing equipment. n1207 We disagree, because the ITR excludes enterprises and industries that are engaged in numerous activities from eligibility for the ACCA for Class 29 Assets tax deduction.

n1206 See SC Paper - Expedited Review Final Determination IDM at Comment 32.

n1207 See JDIL Case Brief at 29; see also West Fraser Rebuttal Brief at 4.

The GOC similarly asserts that this program is available to all enterprises and is, thus, like a program that the Department examined in CRS from Russia, where the Department found that a tax deduction program was not de jure specific because any company could claim a tax deduction if it performed certain activities. n1208 However, in CRS from Russia, and unlike here, we found that the program was not de jure specific because the applicable law's "articles do not stipulate the eligibility requirements or any limitation on eligibility." n1209 There are many examples where the Department has found a program to be de jure specific based upon a limitation of activities. For example, in CWP from the UAE, the Department found a program to be de jure specific because it excluded enterprises involved with the extraction or refining of petroleum, natural gas, or minerals. n1210 Similarly, in Nails from Oman, the Department found a program to be de jure specific that excluded "enterprises or industries engaged in the field of oil exploration and extraction, and enterprises engaged in the field of extraction of metal ores." n1211 Like the ACCA for Class 29 Assets program, these programs specifically identified industries or activities that were not eligible for benefits under the program. n1212 Lastly, in Citric Acid from the PRC, the Department found programs to be de jure specific based upon the exclusion of companies conducting certain projects. n1213

n1208 See GOC Case Brief at 5; see also CRS from Russia IDM at 117.

n1209 Id.

n1210 See CWP from the UAE IDM at 17.

n1211 See Nails from Oman IDM at 12.

n1212 Id.

n1213 See, e.g. Citric Acid from the PRC IDM at 22.

The GOC argues that the ITR excludes activities and not industries and, therefore, the ACCA for Class 29 Assets program is not specific under section 771(5A)(D)(i) of the Act. n1214 However, as discussed above, the ITR explicitly excludes certain activities from its definition of manufacturing or processing; enterprises and industries engaged exclusively in the excluded activities are not eligible for the ACCA for Class 29 Assets program. Therefore, access to the subsidy is expressly limited to non-excluded enterprises and industries. As described above, in CWP from the UAE and Nails from Oman the Department also found programs to be de jure specific that excluded certain activities. n1215 Moreover, although the GOC states that the excluded activities identified in the ITR are eligible for comparable tax benefits available under other provisions of Canadian tax code, n1216 the existence of these other tax provisions are not subject to our examination in this investigation and are not material to our examination of the ACCA for Class 29 Assets program.

n1214 See GOC Case Brief at 3-4.

n1215 See CWP from the UAE IDM at 17; see also Nails from Oman IDM at 12.

n1216 See GOC Case Brief at 10.

The GOC argues that even if the Department appropriately considered activities in its de jure specificity analysis, the scope of the activity exclusion is very limited. n1217 We disagree that the record reflects that the exclusion is very limited or that this program is widely available. Section 771(5A)(D)(i) of the Act states that a program is de jure specific if the governing authority "expressly limits access to the subsidy." Here, the ITR expressly limited access to the subsidy by excluding numerous activities. For example, enterprises or industries that are engaged exclusively in farming, fishing, construction, or oil or gas extraction are not eligible to receive benefits under this program. Although the GOC is correct that the specificity test is intended to winnow out broadly available assistance spread throughout an economy, it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy would escape the purview of the CVD law." n1218

n1217 Id. at 4.

n1218 See SAA at 930.

We also disagree with the GOC that the Department's practice supports a different result. n1219 In Laminated Hardwood Trailer Flooring from Canada, the Department found the Decentralized Fund for Job Creation Program (DFJC) of the Societe Quebecoise de Developpement de la Main-d'Oeuvre to not be de jure specific. n1220 However, the Department also found assistance under the DFJC program to be "distributed to many sectors representing virtually every industry and commercial sector found in Quebec," as it excluded only retail businesses, nonprofits, and local and regional municipalities. n1221 Here, the ACCA for Class 29 Assets program contains numerous additional eligibility restrictions. Similarly, in Live Swine from Canada (II), the Department found the Transitional Assistance/Risk Management Funding grant program to not be de jure specific because it was available to most of the agricultural sector with the exception of producers of processed agricultural products. n1222 In addition to the fact that this investigation does not require that the Department analyze specificity of an agricultural subsidy (which is governed by special rules, under 19 CFR 351.502(d)), again, the ACCA for Class 29 Assets program contains numerous additional eligibility restrictions. Finally, in Fresh Cut Flowers from the Netherlands, the Department found that a program was not de jure specific because it excluded "one narrow type of agricultural activity." n1223 This case predates the statutory amendments made under the URAA, and in any event, is not analogous to the numerous activities that are excluded under the ACCA for Class 29 Assets program.

n1219 See GOC Case Briefat9.

n1220 See Laminated Hardwood Trailer Flooring from Canada, 61 FRat59084.

n1221 Id.

n1222 See Live Swine from Canada (II) IDM at 27.

n1223 See Fresh Cut Flowers from the Netherlands, 52 FR at 3301 and 3306.

Finally, West Fraser argues that the ACCA for Class 29 Assets program is not de jure specific under section 771(5A)(D)(ii) of the Act because it has "objective criteria or conditions governing the eligibility for, and the amount of, (the tax reduction]" that are based on neutral criteria not favoring one enterprise over another. n1224 We disagree. The eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another." n1225 That is, the ITR favors enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not. n1226

n1224 See West Fraser Rebuttal Brief at 6-7.

n1225 See section 771(5A)(D)(ii) of the Act.

n1226 See GOC Etal Primary QNR Response at Exhibit GOC-CRA-ACCA-1.

We therefore determine that the ACCA for Class 29 Assets program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for this tax program is expressly limited to certain enterprises or industries. As a result of this finding, we need not address the respondents' arguments regarding de facto specificity.

Comment 69: Whether the ACCA for Class 29 Assets is a Tax Deferral

In the Preliminary Determination, the Department preliminarily determined that the ACCA for Class 29 Assets provided a tax benefit in the form of a deduction from taxable income through the accelerated depreciation of Class 29 assets. n1227 West Fraser and Canfor argue that the program does not provide tax benefits, but, rather a tax deferral. They claim that a benefit should, thus, be calculated as though the amount of tax deferred was a government-provided loan in accordance with 19 CFR 351.509(a)(2). n1228 West Fraser argues that whether the assets are classified as Class 29 or Class 43, the amount depreciated in each asset class is eventually the same, and only the time period over which the depreciation is recognized is different. n1229 West Fraser claims that there is no reduction in the amount of taxes owed under the ACCA for Class 29 Asset Program. n1230 West Fraser maintains that the accelerated depreciation defers tax savings to subsequent years' taxes and is, therefore, a method of tax deferral in accordance with 19 CFR 351.509(a)(2). n1231 The petitioner maintains that treating this program as a tax deferral would contradict the Department's longstanding policy with respect to accelerated depreciation programs, as articulated in the CVD Preamble, n1232

n1227 See PDM at 72.

n1228 See West Fraser Rebuttal Brief at 9-12; see also Canfor Case Brief at 58.

n1229 See West Fraser Rebuttal Brief at 9.

n1230 Id.

n1231 Id.

n1232 See Petitioner Rebuttal Brief at 148, footnote 497 (citing CVD Preamble, [*63 FR at 65375-76).*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

Department's Position: We disagree that this should be treated as a tax deferral program. West Fraser's characterization of the Class 29 program, as compared with the alternative Class 43 normal depreciation, as the deferral of taxes, runs counter to the purpose of the ACCA for Class 29 Assets program, which is to provide an incentive for firms to purchase eligible manufacturing equipment. n1233 The accelerated depreciation under the program permits the realization of the tax benefit more quickly than if the assets were classified under Class 43. n1234 While it is true that there is no difference in the amount of depreciation over time for each asset class, this argument ignores that accelerated depreciation provides a deduction against taxable income during a shorter period, during which taxable income is more easily forecasted. Class 29 deductions, which are depreciated over a three-year period, occur in a shorter time frame than Class 43 assets, and that shorter time frame permits some anticipation of tax status. As such, if a company foresees that the upcoming three years may be particularly profitable, it may be beneficial to that company to participate in the program, thereby deducting from its taxable income the increased Class 29 depreciation value during those three years. In contrast, Class 43 deductions occur over a much longer depreciation period, during which there is no assurance that tax savings can be obtained (i.e., that the company would have taxable income during each year from which to deduct the standard Class 43 depreciation value). Further, a conclusion that this is a tax deferral would require taxable income to remain stable; but there is no certainty from year to year that a company will have taxable income to offset with this deduction, or that the benefits will be offset by higher taxes in the future. Additional potential factors, such as changes in tax provisions, government tax policies, or the possibility that the recipient company is in a future tax loss position, might prevent the taxes "deferred" due to depreciation under the program from materializing.

n1233 See GOC Etal Primary QNR Response at CRA-45-46 and Exhibit GOC-CRA-ACCA-4.

n1234 Id. at CRA-45-46.

Because of this uncertainty, it has been the Department's practice to treat accelerated depreciation programs as a tax savings (deduction) in the relevant year rather than a tax deferral. n1235 Further, the CVD Preamble specifically discusses our approach to accelerated depreciation:

(w]e will, therefore continue our current methodology for calculating

the tax benefits from accelerated depreciation schemes on a year by year

basis… (w]e agree with the commenters that our guiding principle is to

treat as a countervailable benefit the difference between the taxes a

company actually pays and the taxes it would have paid if it had not

incurred a loss or a diminished profit as a result of accelerated

depreciation or a loss carryforward n1236

n1235 See, e.g., SSP from Belgium, [*64 FR at 15580-15581;*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3W4P-8F20-006W-81XM-00000-00&context=) see also OCTG from the PRC IDM at Comment 42; see also Pressure Pipe from the PRC IDM at Comment 30.

n1236 See CVD Preamble, [*63 FR at 65375-65376.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

Therefore, we do not calculate the tax benefits from this type of program on a prospective basis, but on a year-by-year basis by calculating the difference between what the firm paid under the ACCA for Class 29 Assets program, and what it would have paid in the absence of the program (i.e., had those assets been classified as Class 43 assets). n1237 Accordingly, we determine that we will not treat this accelerated deprecation program as a tax deferral and will maintain our methodology from the Preliminary Determination.

n1237 See 19 CFR 351.509(a)(1).

Comment 70: Whether the AJCTC is Specific

In the Preliminary Determination the Department found the AJCTC de jure specific under section 771(5A)(D)(i) of the Act. n1238 The GOC argues that this program is neither de jure nor de facto specific. n1239 The petitioner asserts that the Department should continue to find the program to be de jure specific in the final determination. n1240

n1238 See PDM at 73.

n1239 See GOC Case Brief at 15-17.

n1240 See Petitioner Rebuttal Brief at 109-114, 119-120.

Department's Position: The AJCTC allows employers to claim a tax credit of 10 percent of wages for qualifying apprentices in the first two years of the apprentice's employment, up to a maximum of C$2,000 per apprentice per year. n1241 In the Preliminary Determination, we found this program to be de jure specific because a qualifying apprentice is defined as someone working in a prescribed trade. The prescribed trades that are eligible to benefit from this program are only those listed as Red Seal Trades. n1242 Thus, to qualify for a tax credit under the program, an employer must employ an apprentice working in one of the 56 identified Red Seal Trades. n1243 This program is de jure specific under section 771(5A)(D)(i) of the Act, because as a matter of law, eligibility for these programs is expressly limited to certain industries.

n1241 See GOC Etal Primary QNR Response at GOC-CRA-31.

n1242 Id.

n1243 Id.; see also Exhibit GOC-CRA-AJCTC-1.

However, the GOC argues that because this program is limited by "trade," it is limited neither by industry nor enterprise as required under section 771(5A)(D)(i) of the Act. The GOC argues that the Red Seal Trades are types of jobs, and thus this program is open to all industries and only limited by activities. We find this argument unavailing. We do not distinguish, and neither the statute nor the ***regulations*** require us to distinguish, between an enterprise or industry and an activity performed by that enterprise or industry for purposes of evaluating de jure specificity. n1244 Instead, the pertinent question under section 771(5A)(D)(i) of the Act is whether access to the program is expressly limited to certain enterprises or industries. As we have found, the AJCTC is expressly limited to enterprises or industries that are engaged in one of the limited "Red Seal Trades."

n1244 Furthermore, in practice, we have found programs to be de jure specific where eligibility was limited to enterprises or industries engaged in certain activities or projects. See, e.g., CWP from the UAEIDM at 17; see also Nails from Oman IDM at 12.

The GOC also argues that the AJCTC is not limited to a "group" of industries as required by section 771(5A)(D) of the Act because the eligible industries are "widely disparate." n1245 Again, we find this argument to be misplaced. Under section 771(5A)(D)(i) of the Act, access to assistance need only be limited to an enterprise or industry, or groups thereof; the heterogenous or homogeneous nature of the industries included or excluded is immaterial to our analysis. n1246

n1245 See GOC Case Brief at 16.

n1246 1 9 CFR 351.502(b) (stating that in determining whether a subsidy is provided to a "group" for purposes of section 771(5A)(D) of the Act, the Department is not required to consider whether there are "shared characteristics" within the group of eligible enterprises or industries).

Therefore, the Department continues to find this program to be de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, the program expressly limits eligibility to certain activities, which by extension limits it to certain industries. Because of this finding, we need not address the GOC's arguments regarding whether the AJCTC is de facto specific.

Comment 71: Whether the Department Must Account for Gains and Losses in Tax Savings in the AITC Program

In the Preliminary Determination, the Department preliminarily determined that that a benefit was conferred to JDIL under the AITC in the amount of the tax credit used to reduce taxes payable under 19 CFR 351.509(a)(1). n1247 Under the program, a participant may take 10 percent of the cost of qualified property as a credit against taxes owed. n1248 JDIL argues that: (1) qualified property includes certain machinery and equipment, including Class 29 assets; (2) the depreciable value of Class 29 assets is deducted in the calculation of taxable income; and, thus, (3) when AITCs are applied against taxes payable, they reduce the depreciable value of the qualified property under the program, resulting in lower tax savings than the AITC itself. n1249 JDIL argues that the Department must account for the both gains and losses in tax savings to properly calculate the AITC program benefit. n1250 The petitioner argues that accounting for the losses would be an impermissible offset. n1251

n1247 See PDM at 73-74.

n1248 Id.

n1249 See JDIL Case Brief at 27; see also JDIL Rebuttal Brief at 2.

n1250 Id.

n1251 See Petitioner Rebuttal Brief at 153.

Department's Position: We disagree with JDIL that we must account for its proposed offsets to properly calculate its benefit for the AITC program under 19 CFR 351.509(a)(1). Section 771(6) of the Act permits the Department to calculate the net countervailable subsidy to a respondent by allowing for only three narrow offsets to a respondent's gross benefit: (1) the deduction of application fees, deposits or similar payments to qualify for or receive a subsidy, (2) accounting for losses due to deferred receipt of the subsidy, if the deferral is mandated by the Government and (3) the subtraction of export taxes, duties or other charges intended to offset the countervailable subsidy. The offset that JDIL requests'to account for diminished tax savings as a result of the reduced depreciable value of certain assets'is not one of the three enumerated offsets that are permitted by the statute. Furthermore, the Department previously evaluated similar arguments in SC Paper from Canada - Expedited Review, and also found that the offset JDIL requested in the form of additional taxes it may have paid as a result of utilizing the AITC was not permissible under section 771(6) of the Act. n1252 Moreover, in accordance with 19 CFR 351.503(e), the Department does not consider the tax consequences of a benefit. Accordingly, we continue to calculate JDIL's benefit from the AITC tax program as we did in the Preliminary Determination.

n1252 See SC Paper from Canada - Expedited Review IDM at 124.

Comment 72: Whether the Benefit for the Atlantic Investment Tax Credit Should be Adjusted

In the Preliminary Determination, the Department found the AITC to be to be a credit against federal income tax owed, and that JDIL benefitted under this program. n1253 In its case brief, the petitioner argues that the Department did not reflect the total credit claimed against JDIL's tax liability. n1254 Specifically, the petitioner argues that the Department should include both the tax credit earned in the tax year, as well as the AITC claim that was carried forward from previous tax years. JDIL rebuts that the benefit should be the amount of tax savings resulting from the program, not the amount of tax credit. n1255

n1253 See PDM at 74.

n1254 See Petitioner Case Brief at 69-70.

n1255 See JDIL Rebuttal Brief at 2.

Department's Position: We agree with the petitioner. In the Preliminary Determination, the Department inadvertently accounted only for the tax credit earned in tax year 2014, instead of the tax credit claimed during the tax year. For this final determination, consistent with 19 CFR 351.509(a)(1), we are including the full amount of credit claimed by JDIL during the POI. n1256

n1256 See JDIL Final Calculation Memorandum.

JDIL has also argued that the Department must take into account additional taxes that the company may have paid as a result of utilizing the AITC. n1257 As discussed in Comment 71,we disagree that we should adjust JDIL's benefit from this program to take into account the secondary effect of JDIL's additional tax obligations due to its use of the program. Therefore, beyond updating the benefit to reflect the full amount of the tax credit applied against JDIL's taxes due in the POI, we have not further modified the benefit for this program, because the argument presented by JDIL is contrary to law, as it is not permitted byl9 CFR 351.503(e)or section 771(6) of the Act.

n1257 Id.

Comment 73: Whether the Alberta TEFU Marked Fuel Program Provides a Countervailable Subsidy

The GOA and West Fraser argue that the Alberta TEFU Marked Fuel Program is not de jure specific because eligibility is not limited to any particular industries, and because this program merely identifies the uses for which fuel may be purchased at a lower tax rate. The GOA and West Fraser also argue that the program is not de jure specific pursuant to section 771(5A)(D)(ii) of the Act because it has objective, neutral criteria that are clearly set forth in provincial statutes and ***regulations***, eligibility is automatic, and the conditions for eligibility are strictly followed. n1258 The GOA and West Fraser likewise assert that, because the Alberta forestry industries' usage of marked fuel is not disproportionate to the Alberta forestry industries' share of the Alberta economy, nor is the forestry industry a predominant user of the program, there is no basis for the Department to find that the TEFU Marked Fuel Program is de facto specific. n1259 The GOA asserts that the applicable laws limiting eligibility for these subsidies are "activity-based exclusions, not industry-based ones," and that "all industries are in fact eligible to claim the [benefit] for the non-excluded activities they perform." Finally, the GOA argues that the TEFU Marked Fuel Program does not provide a financial contribution to any companies in Alberta because the GOA is not foregoing any tax revenue that would otherwise be collected. n1260

n1258 See GOA Case Brief at 69-72; see also West Fraser Case Brief at 55-57.

n1259 See GOA Case Brief at 73; see also West Fraser Case Brief at 57-58.

n1260 See GOA Case Brief at 73-74.

The petitioner argues that that the Department correctly determined that the GOA fuel tax subsidy programs are de jure specific pursuant to section 771(5A)(D)(i) of the Act because the tax exemptions, reductions, and refunds are expressly limited to certain categories of consumers. n1261 According to the petitioner, de jure specificity exists when eligibility is explicitly limited to certain activities because "only the industries involved" in those activities are eligible. n1262 Concerning the programs at issue, only users purchasing fuel for a prescribed list of approved activities may obtain the tax exemption or reduction. Accordingly, these programs are de jure specific in accordance with the statute and the Department's established practice.

n1261 See Petitioner Rebuttal Brief at 120.

n1262 Id. at 121 (citing CRS from Brazil IDM at 51-54; see also HRS from Brazil IDM at 51-54; see also Citric Acid from the PRC IDM at 22; see also Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman IDM at Comment 2.

The petitioner asserts that the Department can also make a determination that the Alberta fuel tax exemption program is de facto specific pursuant to section 771(5A)(D)(iii)(II) of the Act because a group of industries is the predominant users of this subsidy. n1263

n1263 See Petitioner Rebuttal Brief atl21.

Department's Position: The Marked Fuel Tax Exemption program, which is part of the GOA's larger TEFU program, provides a tax exemption of nine cents per liter to eligible companies and municipalities when fuel is used in unlicensed vehicles, machinery, and equipment for qualifying off-road activities. n1264 Consistent with the Preliminary Determination, we continue to find that this program is de jure specific within the meaning of section 771(5A)(D)(i) of the Act because the program expressly limits access to the tax exemption to enterprises or industries that use marked fuel for one of these limited, prescribed purposes. Specifically, eligibility for this program is limited in Alberta's Fuel Tax ***Regulation*** to those entities that have a valid fuel tax exemption certificate. n1265 And only consumers that purchase marked fuel for specific purposes or uses set forth in section 8(3) of the Fuel Tax ***Regulation*** are eligible for a fuel tax exemption certificate to purchase marked fuel. n1266

n1264 See GOA Primary QNR Response at ABI-l-ABI-10.

n1265 Id. at Exhibit AB-TEFU-5, Fuel Tax 10(1).

n1266 Id. at Fuel Tax 8(3).

The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly used throughout an economy, but it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law." n1267 Although West Fraser and the GOA argue that all enterprises or industries can claim the tax exemption, provided that they satisfy the eligibility criteria, we disagree. Access to the subsidy is expressly limited to enterprises or industries engaged in certain activities, and West Fraser and the GOA do not argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which a tax exemption certificate can be granted.

n1267 See SAA at 930.

Furthermore, the Department's finding here is consistent with our past practice. For example, in Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, the Department found that a particular subsidy program "expressly limit [ed] access . ..to certain enterprises or industries" when the "(t]he GCC Industrial Rules specifically exclude [d]" certain enterprises or industries, such as those that mined or extracted raw materials but did not convert them into semi-finished or finished products. n1268 Thus, the Department may make a finding of de jure specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

n1268 See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman IDM at Comment 2; see also Nails from Oman IDM at Comment 1; see also Pipe from the UAE IDM at Comment 1.

We also disagree with the GOA and West Fraser that the program is not de jure specific pursuant to section 771(5A)(D)(ii) of the Act, because it has "objective criteria" governing eligibility. n1269 Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" means criteria "that are neutral and that do not favor one enterprise or industry over another." Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities. n1270 Therefore, the eligibility criteria do not meet the statutory definition of "objective criteria," because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes. We find that de jure specificity exists when eligibility is clearly limited to certain activities because only the industries involved in those activities are, in fact, eligible to obtain the tax exemption or reduction. Thus, we find that these programs are de jure specific in accordance with the statute and the Department's established practice. Because we continue to determine that this program is de jure specific, we need not address the parties' arguments regarding whether this program is de facto specific

n1269 See GOA Case Brief at 70-71; see also West Fraser Case Brief at 56-57.

n1270 See GOA Primary QNR Response at ABI-7-ABI-8.

Finally, we disagree with the GOA's argument that the program does not provide a financial contribution because marked fuel was originally not taxed, and only recently became taxed at a lower rate than other fuel. n1271 This exemption results in the GOA foregoing tax revenue that would otherwise be due. n1272 Specifically, absent the marked fuel program, companies would be paying a fuel tax rate that, during the POI, ranged from nine cents to thirteen cents per liter to the GOA for marked fuel purchases. n1273 It is irrelevant that the GOA, in the past, may not have taxed these purchases. Accordingly, we determine that the TEFU partial tax exemption constitutes a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act, and provides a benefit to the recipient equal to the amount of additional taxes the recipient would have paid in the absence of the program, pursuant to section 771(5)(E) of the Act and 19 CFR 351.509(a)(1).

n1271 See GOA Case Brief at 73-74.

n1272 See section 771(5)(D)(ii) of the Act.

n1273 See GOA Primary QNR Response at ABI-12.

Comment 74: Whether the Coloured Fuel Program Evaluated in the Preliminary Determination Provides Countervailable Subsidies

In the Preliminary Determination, the Department calculated a countervailable benefit for the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program. n1274 The GBC, Canfor, and West Fraser argue that the lower tax rate applied to coloured fuel does not provide a financial contribution. n1275 The GBC and Canfor argue that there is a policy rationale for drawing a distinction between clear and coloured fuel, and applying two different tax rates based on the usage of the fuel. In particular, the GBC and Canfor assert that the tax reflects that vehicles using coloured fuel (predominantly for off-highway purposes) do not contribute to the expense of maintaining roads and transportation infrastructure to the same extent as vehicles operated on highways. n1276 Canfor and West Fraser also argue the program is not de jure specific because the Motor Fuel Tax Act does not expressly limit access to the lower tax rate for coloured fuel to companies engaging in off-highway applications of motor fuel, nor does it expressly limit access to any enterprise or industry. n1277 Canfor and West Fraser also argue that none of the de facto specificity criteria apply. n1278

n1274 See PDM at 76-77.

n1275 See GBC Case Brief at 99-100; see also Canfor Case Brief at 40-41; see also West Fraser Case Brief at 58.

n1276 See GBC Case Brief at 99-100; see also Canfor Case Brief at 40-41.

n1277 See Canfor Case Brief at 40-44; see also West Fraser Case Brief at 55-59.

n1278 See Canfor Case Brief at 39-40; see also West Fraser Case Brief at 57-58.

In addition to arguments regarding financial contribution and specificity, Canfor argues that the program does not provide a tax benefit because all vehicles are subject to the same clear fuel tax rate when using public roads. n1279 West Fraser, further argues, the Department did not initiate on this program and therefore it is not lawfully countervailable. n1280

n1279 See Canfor Case Brief at 40.

n1280 See West Fraser Case Brief at 55.

The petitioner rebuts that, in past proceedings, the Department has reasonably determined that foreign governments cannot circumvent U.S. CVD laws simply by using "activities" or "projects" as proxies for enterprises or industries. As long as a subsidy program's criteria limit eligibility to enterprises or industries (or subsets of industries) engaged in those specific activities or projects'and exclude others'the Department may lawfully make a finding of de jure specificity. n1281

n1281 See Petitioner Rebuttal Brief at 110-114.

Department's Position: For the reasons described below, the Department continues to find that under this program, a financial contribution exists in the form of revenue foregone under section 771(5)(D)(ii) of the Act, that the program is specific under section 771(5A)(D)(i) of the Act, and that the program provides a benefit to the recipient in the amount of the tax savings under 19 CFR 351.510(a)(1). In its questionnaire response, the GBC described that coloured fuel is gasoline or diesel to which a specific dye has been added in order to distinguish it from standard fuel, i.e., clear gasoline and diesel. n1282 Depending on the jurisdiction in which clear fuel is purchased the motor fuel tax is between 14.5 cents per liter and 25.5 cents per liter. In comparison, coloured fuel is subject to a motor fuel tax of 3 cents per liter, regardless of the region in the province where it is purchased. n1283 To be eligible to purchase coloured fuel, and thus, to claim the lower motor fuel tax, purchasers of coloured fuel are required to submit a certification, Coloured Fuel Certification (FIN-430), certifying that the purchased coloured fuel will be used for authorized purposes. n1284 The authorized purposes are, in turn, expressly identified in section 15(1) of the Motor Fuel Tax Act, and limit the use of coloured fuel to certain activities, primarily "off-highway." n1285 The combined effect of this scheme is that the Motor Fuel Tax Act restricts access to the lower motor fuel tax to enterprises or industries that are engaged in one of the limited uses for which coloured fuel is authorized.

n1282 See GBC Supp QNR 2 Response at BC-66.

n1283 Id. at BC-66 - BC-67.

n1284 Id. at BC-68.

n1285 Id. at Exhibit-BC-OA-SUPP-29,

A financial contribution for purposes of section 771(5)(D)(ii) of the Act means foregoing or not collecting revenue that is otherwise due. n1286 Section 15(3) of the Motor Fuel Tax Act, explicitly states the "otherwise", "[that] a person who uses coloured fuel for the purpose not authorized by subsection (1) must pay to the government, at the prescribed time and in the prescribed manner, tax equal to the difference between (a) the tax that the person would have paid on that fuel if the fuel had not been taxed as coloured fuel, and (b) the tax paid by the person on that fuel." n1287 Vehicles that use coloured fuel on the highway, an unauthorized purpose, must pay the tax difference between 3 cents per liter for coloured fuel and the location-specific tax for clear fuel. Therefore, this program provides a financial contribution pursuant to section 771(5)(D)(ii) of the Act in the form of revenue foregone. It is irrelevant to this inquiry whether'as the GBC and Canfor contend'the GBC's differential tax scheme is supported by a policy rationale.

n1286 See GBC Case Brief at 99-100; see also Canfor Case Brief at 40-41; see also West Fraser Case Brief at 58.

n1287 See GBC Supp QNR 2 Response at Exhibit-BC-OA-SUPP-29.

We likewise disagree with Canfor that the program did not provide a benefit. Under 19 CFR 351.510(a)(1), "[i]n the case of a program, other than an export program, that provides for a full or partial exemption or remission of an indirect tax or an import charge, a benefit exists to the extent that the taxes or import charges paid by a firm as a result of the program is less than the tax the firm would have paid in the absence of the program." As described above, coloured fuel is authorized only for certain purposes in British Columbia, and absent the coloured fuel program, Canfor would be taxed at clear fuel rates between 14.5 cents per liter and 25.5 cents per liter depending on the jurisdiction. n1288 Record evidence demonstrates that BC respondents participated in the program and benefited from the reduced tax rate in accordance tol9 CFR 351.510(a)(1). Therefore, under the methodology established under the Department's ***regulations***, a benefit has been conferred. Although Canfor argues that "all vehicles are subject to the same clear fuel tax rate when using public roads," n1289 this does not alter the fact that when Canfor participates in the coloured fuel program, it receives a benefit.

n1288 Id. at BC-66 - BC-67.

n1289 See Canfor Case Brief at 40.

With regard to specificity, we continue to find that this program is de jure specific, in accordance to section 771(5A)(D)(i) of the Act, because the Motor Fuel Tax Act expressly restricts access to the subsidy to enterprises or industries that are engaged in a limited number of authorized purposes off-highway, including trucks when used for hauling logs or trucks when used for hauling lumber. The specificity test is designed to avoid the imposition of CVDs where a subsidy is broadly used throughout an economy, but it is not "intended to function as a loophole through which narrowly focused subsidies provided to or used by discrete segments of an economy could escape the purview of the CVD law." n1290 Although Canfor and West Fraser argue that all enterprises or industries can claim the lower tax rate, provided that they use the fuel for an authorized purpose, we disagree. Access to the subsidy is expressly limited to enterprises or industries engaged in certain activities, and Canfor and West Fraser do not argue or cite evidence that broad segments of the economy are engaged in one of the narrow, limited activities for which use of coloured fuel is authorized.

n1290 See SAA at 930.

Furthermore, this approach is consistent with our past practice. For example, in Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman, the Department found that a particular subsidy program "expressly limit [ed] access .. .to certain enterprises or industries" when the "[t]he GCC Industrial Rules specifically exclude[d]" certain enterprises or industries, such as those that mined or extracted raw materials but did not convert them into semi-finished or finished products. n1291 Thus, the Department may make a finding of de jure specificity in instances where an authority has limited access to a subsidy to enterprises or industries, or subsets of industries, engaged in specific activities or projects, and excluded others.

n1291 See Circular Welded Carbon-Quality Steel Pipe From the Sultanate of Oman IDM at Comment 2; see also Nails from Oman IDM at Comment 1; see also Pipe from the UAE IDM at Comment 1.

We also disagree with the GBC, Canfor, and West Fraser that the program is not de jure specific pursuant to section 771(5A)(D)(ii) of the Act, because it has "objective criteria" governing eligibility. n1292 Under section 771(5A)(D)(ii) of the Act, the term "objective criteria" mean criteria "that are neutral and that do not favor one enterprise or industry over another." Under this program, the eligibility criteria limits access to the subsidy to only those users purchasing fuel for a prescribed list of approved activities. n1293 Therefore, the eligibility criteria do not meet the statutory definition of"objective criteria," because they favor certain enterprises, that is, those enterprises or industries that use marked fuel for one of those limited, prescribed purposes. Because we continue to determine that this program is de jure specific, we need not address the parties' arguments regarding whether this program is de facto specific.

n1292 See West Fraser Case Brief at 56-57.

n1293 See GBC Supp QNR 2 Response at Exhibit-BC-OA-SUPP-29.

Finally, we disagree with West Fraser's argument that because the Department did not formally initiate an investigation of the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program, the program is not lawfully countervailable. Specifically, as discussed in Comment 5, section 775 of the Act states that the Department "shall include" a subsidy program or practice in a proceeding if it "discovers a practice which appears to be a countervailable subsidy, but was not included in the matters alleged in a countervailing duty petition." n1294 There is no legal requirement that the Department initiate a formal investigation before investigating (and ultimately countervailing) what appear to be countervailable subsidies discovered during an investigation. Accordingly, the Department continues to find that it is lawful to countervail the "Lower Tax Rates for Coloured Fuel/BC Coloured Fuel Certification" program.

n1294 See section775 of the Act; see also 19 CFR 351.311(b).

Comment 75: Whether the GNB's Gasoline and Fuel Tax Exemptions and Refund Program Provides a Financial Contribution and Is Specific

In the Preliminary Determination, the Department calculated a countervailable subsidy for JDIL's receipt of funds under the GNB Gasoline & Fuel Tax Exemptions and Refund Program. The GNB claims that there is no basis for the Department's preliminary determination, arguing that there is no financial contribution because only those using public highways should be subject to fuel taxation under the Gasoline and Motive Fuel Tax Act. n1295 JDIL echoes this argument, while also adding that the program is not specific. n1296

n1295 See GNB Case Brief at 43-44.

n1296 See JDIL Case Brief at 37-39.

Department's Position: We find, as we did in the Preliminary Determination, that this program constitutes a countervailable subsidy, as it meets all the criteria that define a countervailable subsidy, namely, financial contribution, specificity, and benefit. n1297 Neither the GNB nor JDIL have provided support for their assertion that the purpose behind the imposition of an indirect tax, i.e., road and highway maintenance, in any way trumps the structure of the law and ***regulation*** underlying the tax, and defining the exemptions thereto. In this case, we have reviewed the Gasoline and Motive Fuel Tax Act, sections 3(1) and 6(l)of which imposes taxes ofl5.5 cents on each litre of gasoline and 21.5 cents on each litre of motive fuel, respectively. n1298 Under the Gasoline and Motive Fuel Tax Act, a sales tax on gasoline and motive fuel is applied throughout the province generally, "for the public use of the Government," and is essentially a revenue due to the GNB based on the volume of fuel purchased or consumed within the province. However, sections (3)(6) and (6)(6) of the Gasoline and Motive Fuel Tax Act carve out certain exemptions or refunds of the indirect taxes for purchases of gasoline and motive fuel, respectively, that would otherwise be due. Thus, the Gasoline and Motive Fuel Tax Act applies a generally applicable indirect tax on an activity within the province's jurisdiction, and then exempts (or refunds to) a certain class of consumer from paying these revenues that are otherwise due. We find that this exemption (or refund) is a financial contribution by the GNS, within the meaning of section 771(5)(D)(ii) of the Act, to those exempted from paying the tax that would otherwise have been applicable to them, and to those whose taxes paid under the program are later refunded.

n1297 See section 771(5) of the Act.

n1298 See GNB Primary QNR Response at Exhibit NB-GF-2.

Furthermore, we find that the Gasoline and Motive Fuel Tax Act is specific because it clearly defines a limited number of professions or field of activity that are eligible to be exempted from, or to be refunded, taxes that are generally applicable to all purchasers or consumers of gasoline in the province. In this case, aquaculturists, farmers, silviculturists, producers of electricity for sale, persons consuming fuel in the preparation of food, lighting and heating of premises or heating of domestic hot water, wood producers, forest workers, manufacturers, mining or quarrying operators, and registered vessels operators n1299 are exempted from paying the sales tax on gasoline or motive fuel, or are entitled to receive refunds of taxes paid. All other consumers of gasoline and motive fuel in New Brunswick are required to pay these taxes, and are not entitled to receive a refund of taxes paid. Therefore, as in the Preliminary Determination, we continue to find that this program is de jure specific under section 771(5A)(D)(i) of the Act.

n1299 Id. at Exhibit NB-GF-1 and Exhibit NB-GF-2.

Comment 76: Whether LIREPP Constitutes a Financial Contribution and Confers a Benefit on Irving Companies

In the Preliminary Determination, we found that JDIL and IPL were cross-owned, that IPL received Net LIREPP credits on its monthly electricity bills from NB Power, and that IPL transferred those credits to JDIL. We further preliminarily found that those credits constituted a financial contribution in the form of revenue foregone under section 771(5)(D)(ii) of the Act. JDIL stated that JDIL and certain of its cross-owned affiliates IPL and IPP as well as SGP participate in LIREPP collectively as an "Eligible Large Industrial Enterprise." n1300 JDIL and the GNB argue that NB Power did not forego revenue, but, rather, this program should be analyzed as an MTAR program to determine whether NB Power purchased renewable electricity from the participating Irving companies for more than adequate remuneration. n1301 Specifically, the parties argue that the C$95/MWh rate that NB Power paid to the participating Irving companies through the credits on its electricity bills is less than what NB Power pays for other sources of renewable energy, or the cost for other sources of renewable energy. n1302 Thus, the GNB and JDIL argue, the LIREPP credit is money that NB Power owes the participating Irving Companies, not money that NB Power is entitled to receive, and, therefore, NB Power did not forgo any revenue "otherwise due" from the Irving Companies. n1303

n1300 See JDIL Case Brief at 35. We will refer to IPL, IPP, SGP, and JDIL collectively as participating Irving companies. In the SC Paper Expedited Review, we found JDIL, IPL, and IPP are cross-owned as a result of their ownership by the same holding company that owns IPL. See SC Paper from Canada - Expedited Review IDM at 10.

n1301 See GNB Case Brief at 40-41; see also JDIL Case Brief at 34-35.

n1302 Id.

n1303 Id.

The petitioner argues that in SC Paper from Canada - Expedited Review, the Department reasonably considered the operation of LIREPP as a whole, rather than distinct purchases of electricity from, and sales of electricity to, NB Power. According to the petitioner, treating the credit as "money that NB Power owes" to the relevant Irving entities ignores that this money is intended to incentivize certain energy consumption and production behaviors, while limiting the analysis to the adequacy of NB Power's electricity purchases ignores the fact that those purchases only occurred in context with NB Power's sales to the Irving entities. n1304 The net effect of these transactions results in a credit that is used to reduce Irving's electricity payment to NB Power, a Crown corporation. n1305 Accordingly, the petitioner argues that the Department should continue to find that this program is revenue foregone, consistent with SC Paper from Canada - Expedited Review.

n1304 See Petitioner Rebuttal Brief at 140.

n1305 Id. at 141.

Department's Position: Based upon our analysis of all the arguments submitted by the interested parties, we continue to find that the LIREPP program is properly analyzed as a revenue foregone program, rather than as a possible MTAR program. We continue to find that the amount of LIREPP credits that IPL transfers to JDIL confers a benefit to JDIL, in accordance with 19 CFR 351.525(b)(6)(v). Although we found that the LIREPP program is de facto specific in the Preliminary Determination, upon further review of the record in this investigation, we determine that LIREPP program is de jure specific in accordance with section 771 (5A)(D)(i) of the Act, because the GNB expressly limits access to LIREPP to certain eligible enterprises by law. n1306 Accordingly, consistent with our practice, because we have now found that the LIREPP program is de jure specific, we are not reaching a final determination regarding whether the LIREPP program is also de facto specific.

n1306 See GNB Primary QNR Response at 21-22, Exhibit NB-LIREPP-2, and NB-LIREPP-3. According to the GNB, LIREPP is only available to large industrial companies that produce eligible renewable sources of energy and owns and operates an eligible facility that has an electrical energy requirement of not less than 50 GWh per year; obtain all or a portion of its electricity on a firm basis from NB Power; and at least 50 percent of the primary products produced by the facility are exported to another province or territory of Canada or elsewhere. Eligible renewable sources of energy mean electricity generated in the Province at an eligible facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors, for the purposes of cogeneration of producing combined heat and power.

As detailed in the JDIL's verification report and the GNB verification report in SC Paper from Canada - Expedited Review, n1307 LIREPP is a multifaced program. The purpose of the LIREPP program is for New Brunswick to (1) reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces. n1308 According to the GNB verification report in SC Paper from Canada - Expedited Review, GNB officials from NB Power, a Crown corporation, and from DERD, explained one of the reasons that the LIREPP program was implemented was for industries to get credit applied to their electricity bill for the renewable energy they generated. n1309

n1307 See 1DIL Primary QNR Response at Exhibit LIREPP-07; see also 1DIL Verification Report at 17.

n1308 Id.

n1309 See 1DIL Primary QNR Response at Exhibit LIREPP-07.

To determine the amount of the LIREPP credit, the GNB first determines the Canadian Average Rate, which is the average electricity rate for users across all of Canada that are in the same industry as the LIREPP participant. The GNB next determines the Target Reduction Percent, i.e., the percentage that the New Brunswick average electricity rate would have to be reduced in order for it to match the Canadian Average Rate. n1310 The Target Reduction Percent is the starting point to determine how much renewable electricity will be purchased under LIREPP from a particular company. n1311 The GNB then calculates the Target Discount by summing the previous month's firm electricity bills for the LIREPP participant (here, the participating Irving companies), and then multiplies the billed amount by the applicable Target Reduction Percent. n1312 The total is called the Target Discount. n1313 The NB Power officials stated that "the purpose of LIREPP is that "you want to buy enough to get them to the target discount,'" adding that "we want to buy a certain of [electricity], then we resell at firm rates, then the difference is the NET LIREPP Adjustment." n1314 In other words, the NET LIREPP adjustment is the difference between the amount of renewable electricity that NB Power will purchase from the LIREPP participant (here, the participating Irving companies), and the amount of electricity that NB Power will sell to the LIREPP participant (again, the participating Irving companies). The net LIREPP adjustment is provided to participating Irving companies, including JDIL, as credits that are applied to their monthly electricity invoices. n1315 Thus, while the program does encompass, in part, the purchase of a good or service, the credits reduce the participating Irving Companies' monthly electricity bills, and it is the amount of the monthly credits that we have determined is the countervailable benefit consistent with section 771(5)(E) of the Act.

n1310 Id.

n1311 Id.

n1312 Id.

n1313 Id.

n1314 Id.

n1315 Id.

Further, although the participating Irving Companies "sell" electricity to NB Power for C$95/MWh, that rate is immaterial to the calculation of the NET LIREPP adjustment. n1316 This is because the volume of electricity that the participating Irving Companies "sell" to NB Power, most of which is not transmitted to or through the grid, is derived each month using the Target Discount and the C$95/MWh rate. The C$95/MWh rate is fixed in the Electricity Act. n1317 Thus, even if this rate varied, because NB Power works backwards from the Target Discount, the program guarantees that the Target Discount is reached each month by adjusting the volume of NB Power's purchases of electricity from the participating Irving companies. In other words, NB Power has determined in advance the amount of credits it wishes to give the participating Irving companies. As such, we reaffirm our preliminary decision to treat the benefit from this program as the amount of Net LIREPP credits that are provided to participating Irving companies including JDIL to reduce their monthly electricity payments from NB Power, a Crown corporation.

n1316 Id.

n1317 Id.

Comment 77: Whether LIREPP is Tied to Non-Subject Merchandise

JDIL and the GNB argue that Irving companies' participation in LIREPP is tied to the production of non-subject merchandise (i.e. paper products), and is thus not countervailable in this investigation. The parties argue that the participating Irving companies signed an agreement to participate in the program (the LIREPP Agreement), and the GNB was aware at the time the LIREPP Agreement was adopted that an objective of the Agreement was to bring the electricity costs of the Irving companies' pulp and paper facilities in line with those of pulp and paper producers in other Canadian provinces. n1318 In particular, the Target Reduction Percent for the Irving companies, used to calculate the NET LIREPP adjustment applied to the Irving companies' electricity bill, was calculated based on the average firm electricity rate for the Canadian "pulp and paper mill sector." n1319 The parties further argue that the LIREPP Agreement signed between NB Power and the Irving companies made clear that the Irving companies had paper facilities, and, in fact, specifically highlights JDIL's LUP Division. n1320 JDIL further argues that, during the JDIL's verification, the Department traced LIREPP electricity credits directly to the LUP Division's income statement. n1321

n1318 See GNB

n1319 See JDIL

n1320 Id.

n1321 See GNB Case Brief at 42. Case Brief at 34.

The petitioner argues that the Department should continue to treat this as a grant for electricity that subsidizes the Irving companies' operations and attribute the benefit to all sales. In SC Paper from Canada - Expedited Review, the Department attributed the subsidy benefits across JDIL's total production after finding that the credit resulting from this program was not tied to an operating division producing only non-subject merchandise. n1322 Moreover, the petitioner argues, LIREPP benefits reflect a grant for the production and consumption of an input (i.e., electricity) by multiple entities in the Irving companies; that grant is bestowed as a single credit on one entity's electricity bill and subsequently transferred, in part, to JDIL. n1323

n1322 See Petitioner Rebuttal Brief at 136.

n1323 Id.

Department's Position: Based upon our analysis of all the arguments submitted by the interested parties, we continue to determine that LIREPP is not tied to non-subject merchandise. Given the complications of this program, we first find it necessary to describe the relevant players. As stated above, JDIL, our sole producer of subject merchandise, and certain of its cross-owned affiliates IPL and IPP as well as SGP participate in LIREPP. LUP is a division within JDIL. To help satisfy NB Power's renewable energy obligations, NB Power "purchases biomass energy from IPP and hydroelectric power from SGP pursuant to LIREPP and the LIREPP Agreement." n1324 Instead of paying the full amount owed for "purchased" renewable energy to IPP and SGP directly, NB Power applies the "NET LIREPP' credits to the monthly electricity bill issued to IPL, a cross-owned paper producer. n1325 IPL then transfers some of the NET LIREPP credit to JDIL's LUP. n1326

n1324 See JDIL Primary QNR Response at LIREPP-01

n1325 Id.

n1326 Id.

Pursuant tol9 CFR 351.525(b)(5)(i), "(i]f a subsidy is tied to the production or sales of a particular product, the Secretary will attribute the subsidy only to that product." Consistent with the CVD Preamble, we have generally stated that we will not trace how subsidies are used by companies, but rather analyze the purpose of the subsidy based on information available at the time of bestowal. n1327 In other words, under our ***regulation*** and the CVD Preamble, a financial contribution (in this case the NET LIREPP credits for electricity bills) is deemed to benefit a company's overall production absent a requirement explicitly made at the time of bestowal'i.e., when the terms for the provision are set'that the financial contribution may only be used for a certain subset of a company's production. The Department will only find that a subsidy is tied to a particular product when the intended use is known to the subsidy giver (in this case, NB Power) and so acknowledged prior to or concurrent with the bestowal of subsidy. n1328 For example, in determining whether receipt of a grant was tied to a particular product, the Department examines the grant approval document. n1329

n1327 See CVD Preamble, [*63 FR at 65403.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1328 [*Id. at 65402.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

n1329 Id.

The eligibility criteria provided by GNB states that the LIREPP program is available to any large industrial enterprise that owns and operates an eligible facility that generates eligible electricity. n1330 The purpose of this program is two-fold: (1) to reach NB Power's mandate to supply 40 percent of its electricity from renewable sources by 2020; and (2) to bring New Brunswick's large industrial enterprises' net electricity costs in line with the average cost of electricity in other Canadian provinces. n1331 The participating Irving companies are eligible to participate the LIREPP program because of their ability to meet the program's requirements for producing eligible renewable energy, not because the companies produce any specific products (i.e. pulp and paper). Further, the terms of the LIREPP agreements signed between the participating Irving companies and NB Power do not link the bestowal of NET LIREPP credits to any specific products. n1332

n1330 See GNB Primary QNR Response at 21-22 and Exhibits NB-LIREPP-2 and NB-LIREPP-3. According to the GNB, LIREPP is only available to large industrial company that produces eligible renewable sources of energy and owns and operates an eligible facility that has an electrical energy requirement of not less than 50 GWh per year; obtain all or a portion of its electricity on a firm basis from NB Power; and at least 50 percent of the primary products produced by the facility are exported to another province or territory of Canada or elsewhere. Eligible renewable sources of energy mean electricity generated in the Province at an eligible facility at which electricity is generated through the combustion of woody biomass or its by-products from the chemical manufacture of pulp, including black and red liquors, for the purposes of cogeneration of producing combined heat and power.

n1331 Id.

n1332 See 1DIL Primary QNR Response at LIREPP-07 and LIREPP-15.

The LIREPP's lack of tie to pulp and paper products is evident when the program is contrasted with programs which we have found to be tied to pulp and paper. For example, in the SC Paper from Canada investigation and in the Preliminary Determination, we found that the FPPGTP program is tied to pulp and paper, because the grant applicant's guide clearly states that the intent of the program was to improve the environmental performance of Canada's pulp and paper industry, and credits were only to be granted to Canadian pulp and paper companies. n1333 Additionally, in order to be eligible for the program, the projects must be capital investments at Canadian pulp and paper mills that are directly related to the mill's industrial process, n1334 and the project location must be a pulp and paper mill in Canada. n1335 Further, costs associated with lumber products are ineligible for the program. n1336 In contrast, the LIREPP program is available to large industrial companies in any industry that meets the eligibility requirements. The program was not designed to assist specific products. The GNB does not link the bestowal of the LIREPP credit to any specific industry or products. Further, the LIREPP Agreements signed between the participating Irving companies and NB Power does not place any requirement on the Irving companies to effectuate a transfer of the credit between IPL and JDIL, nor does it speak to the Irving companies' use of the LIREPP credit once it is applied to IPL's electricity bill.

n1333 See SC Paper from Canada IDM at 26-27; see also PDM at "Federal Pulp and Paper Green Transformation Program."

n1334 Id.

n1335 Id.

n1336 Id.

Lastly, the LUP is not a separate entity, but rather is a sub-division of JDIL, which produces subject merchandise. n1337 JDIL is incorporated and registered in New Brunswick, n1338 and JDIL files its taxes as one corporate entity (including its subdivision LUP). n1339 Neither the statute nor our ***regulations*** provided for, or require, the attribution of a domestic subsidy to a specific entity within a firm. n1340 JDIL and the GNB are misguided in concluding that because subsidies were provided to a division of a subject merchandise producer that itself does not produce subject merchandise, the subsidies are tied to the production of non-subject merchandise as contemplated by 19 CFR 351.525(b)(5).

n1337 See SC Paper Expedited Review IDM at 98.

n1338 Id.

n1339 See SC Paper from Canada IDM at 161 (citing CFS from the PRC IDM at Comment 8).

n1340 See SC Paper from Canada IDM at 161 (citing CFS from the PRC IDM at Comment 8).

Comment 78: Whether Credits for Road Construction Are a Countervailable Subsidy

The GOQ and Resolute assert that the Department should not have preliminarily found "Credits for the Construction and Major Repair of Public Access Road," to be countervailable n1341 because the 2006 SLA Arbitration LCIA 81010 offset any benefit that Resolute could have received. n1342 They argue that adding countervailing duties on top of the trade remedy (i.e., 2.6 percent export charge) imposed on lumber shipments from Quebec from March 2011 to October 2013,is a double remedy. Resolute states that it paid more in export taxes on its lumber shipments in advance of any refunds received in the POI. Therefore, the GOQ and Resolute argue that the refund received by Resolute is not a benefit because it was offset by the compensation awarded in LCIA 81010. Additionally, Resolute claims that the program should not be countervailed because it is a partial reimbursement only of its costs for the construction of roads owned by the government and operated for public use.

n1341 See PDM at 82-83.

n1342 See GOQ Case Brief at 58-61; see also Resolute Case Brief at 47-49.

The petitioner argues that LCIA 81010 has no bearing on this investigation, and any amounts paid in relation to the arbitral award cannot be used to offset the benefit received under the program, referencing section 771(6) of the Act, which provides only for certain specific offsets to a subsidy. n1343 The petitioner asserts that the GOQ relieved Resolute of expenses incurred for the construction of roads, and Resolute received that benefit in 2015.

n1343 See Petitioner Rebuttal Brief at 156-159.

Department's Position: We agree with the petitioner that LCIA 81010 is irrelevant to the Department's analysis. Within this investigation, the Department is responsible for determining whether a government is providing, directly or indirectly, a countervailable subsidy with respect to the manufacture, production, or export of subject merchandise sold for importation into the United States, pursuant to section 701(a) of the Act. The Department examines subsidies that producers and exporters received during the investigation period as stated inl9 CFR 351.204(b)(2). Because Resolute received a refundable tax credit during the POI, the Department is permitted to examine it. We further agree with the petitioner that any amounts paid in relation to the arbitral award cannot be used to offset the benefit because such payments are not a permissible offset under section 771(6) of the Act.

As discussed in the Preliminary Determination, Revenue Quebec permits corporations that incurred expenses for the construction or major repair of eligible access roads or bridges in public forest areas to claim a refundable tax credit for a portion of the expenses on their income tax returns. n1344 The GOQ reported that, in order to qualify for the refundable tax credit, an applicant must hold a qualification certificate issued by MFFP for each access road or bridge, and must have entered into a forest management agreement, a timber supply and forest management agreement, or a forest management contract with MFFP. n1345 We verified that Quebec sawmills are legally mandated to fulfill several obligations with regard to their TSGs, which include road construction, repairs, and maintenance. n1346 During the POI, Resolute received a refundable tax credit as reimbursement of Resolute's costs for the construction of roads. n1347

n1344 See PDM at 82-83.

n1345 See GOQ Primary QNR Response at QC-TAX-19 and QC-Tax-27; see also Resolute Supp QNR 5 at 8.

n1346 See GOQ Verification Report at ll.

n1347 See Resolute Primary QNR Response, Part 1 at 51-54; see also Resolute Verification Report at 17-18; see also Resolute Case Brief at 47-49.

We agree with the petitioner that the GOQ is offsetting a cost that Resolute is legally required to incur in its normal course of business. As the landowner and steward of public forest areas, the GOQ requires harvesters who hold TSGs to perform various forest management activities in order to maintain the sustainability of forest areas. n1348 During the POI, Resolute secured a significant proportion of its Crown-origin timber from TSGs; therefore, to ensure a secure supply of timber, Resolute must carry out the activities required of TSG-holders under the SFDA, including the construction and repair of roads and bridges in the public forest areas. n1349

n1348 See GOQ Primary QNR Response at Exhibit QC-STUMP-22 (SFDA). Section 4(1) of the SFDA defines "forest management activity" as "an activity related to the cutting and harvesting of timber, the cultivation and exploitation of a sugar bush for maple syrup purposes, the construction,improvement, rehabilitation, maintenance and closure of infrastructure, implementation of silvicultural treatments, including reforestation and use of fire, and control of fires, insect outbreaks, cryptogamic diseases and ***competing*** vegetation, as well as any other activities of the same nature that have a tangible effect on the resources of the forest" (emphasis added).

n1349 See GOQ Verification Report at l1 and Exhibit QC-20.

We find that the manner in which the payments were provided, as reimbursements for obligatory expenses incurred, indicates that the payment was provided by the GOQ to relieve Resolute of a financial burden that Resolute would have otherwise incurred. Therefore, because the GOQ provides reimbursements to Resolute for costs it incurs for the construction or major repair of access roads or bridges in the public forest area, we find that this program provides a financial contribution in the form of a direct transfer of funds under section 771(5)(D)(i) of the Act and bestows a benefit in the amount of the reimbursement. Further, we continue to find that program is de jure specific under section 771(5A)(D)(i) of the Act because eligibility is limited to entities that hold a certificate issued by MFFP and have a forest management agreement, a timber supply and forest management agreement, or forest management contract with MFFP.

Comment 79: Whether the Benefit of the Quebec Private Forest Tax Incentive Was Overstated

Both the GOQ and Resolute argue that the Department preliminarily overstated the benefit amount for the "Tax Incentives for Private Forest Producers - Property Tax Refund for Forest Producers on Private Woodlands in Quebec" program. n1350 They state that the Department countervailed both a refundable credit claimed on the company's 2014 income tax return filed in the POI and a refunded credit, which was claimed in2011 but received in the POI. They assert that were the Department to count both the amount received from a tax credit and the amount claimed for a tax credit year after year, it would be double-counting the benefit. The Department may offset only amounts actually received and, thus, must correct the benefit calculation for this tax program.

n1350 See GOQ Case Brief at 63-64; see also Resolute Case Brief at51-52; see also PDM at 82; see also Resolute Preliminary Calculation Memorandum.

Petitioner argues that the Department properly included both amounts in its benefit calculation because Resolute both claimed a refundable tax credit and received a refunded tax credit in the POI. n1351

n1351 See Petitioner Rebuttal Case Brief at 154-156.

Department's Position: Based on clarification of this refundable tax credit program at verification, n1352 we agree with Resolute and the GOQ that the benefit amount was overstated in the Preliminary Determination. Specifically, we learned that refunded credits are not always received in the year that they are claimed as demonstrated by the credit claimed in2011 but refunded during the POI, and the 2014 credit that Resolute claimed in its tax return filed in the POI but not refunded in the POI. We agree that countervailing credits both when they are claimed and when they are refunded'where the two events occur in different years'would double-count the benefit received by Resolute from that credit. Accordingly, in Resolute's final benefit calculation, we have included in the numerator only the assistance amount that was actually received by the company under this program in the POI. n1353 We determine that the benefit is less than 0.005 percent ad valorem of Resolute's total sales for the POI and, therefore, this tax program did not confer a measurable benefit. As such, we have not included this tax program in our final subsidy rate calculation for Resolute. Also, because the program did not confer a measurable benefit, we need not make a final determination as to the countervailability of the program. n1354

n1352 See Resolute Verification Report at 17-18.

n1353 See Resolute Final Calculation Memorandum.

n1354 In its case brief, Resolute argued that the tax program is not specific to any industry or enterprise. See Resolute Case Brief at 13-14. In its rebuttal brief, the petitioner argues that the tax program is de jure specific. See Petitioner Rebuttal Brief at 122-123.

Comment 80: Whether the M&P ITC and MITC are De Jure Specific

In the Preliminary Determination the Department found Saskatchewan's M&P ITC and Manitoba's MITC de jure specific under section 771(5A)(D)(i) of the Act. n1355 The GOM and GOS argue that these programs are neither de jure nor de facto specific. n1356 The petitioner asserts that the Department should continue to find these programs de jure specific in the final determination. n1357

n1355 See PDM at 78-79, 84.

n1356 See GOS Case Brief at 2-6; see also GOM Case Brief at 5-9.

n1357 See Petitioner Rebuttal Brief at 109-114, 116-118.

Department's Position: Saskatchewan's M&P ITC provides corporations in Saskatchewan with a five percent tax credit on purchases of qualified capital assets, including manufacturing and processing equipment that can be applied against corporate income tax payable in the year earned. n1358 Manitoba's MITC provides corporations with a l0 percent tax credit of purchases of qualified property to be used for manufacturing or processing that can be applied against corporate income tax payable in the year earned. n1359 As set forth below, we continue to find both of these programs to be de jure specific within the meaning of section 771(5A)(D)(i) of the Act.

n1358 See GOS Supp QNR 1 Response at SK-SUPP-1 and Exhibit SK-SUPP-MP-2.

n1359 See GOM Supp QNR 1 Response at Exhibit MB-SUPP-MITC-1, para. 7.2(2).

Both programs limit the tax credit to purchases of qualified property that are used primarily for "manufacturing or processing" goods for sale or lease. The tax credit is fully refundable in Saskatchewan and 80 percent refundable in Manitoba. n1360

n1360 See GOS Supp QNR 1 Response at Exhibit SK-SUPP-MP-2, para 60.1(1); see also GOM Supp QNR 1 Response at Exhibit MB-SUPP-1, para. 7.2(1.1) and page MBP-SUPP-12.

With regard to the M&P ITC, the tax credit is provided for in Saskatchewan's Income Tax Act. In particular, section 60.1 defines "manufacturing or processing" as "...within the meaning of subsection 125.1(3) of the (federal Income Tax Act], and includes qualified activities as defined in the federal ***regulations*** made for the purposes of the definition of Canadian manufacturing and processing profits in subsection 125.1(3) of the (federal Income Tax Act]" n1361 The federal Income Tax Act, subsection 125.1(3) in turn states:

"manufacturing or processing does not include (a) farming or fishing,

(b) logging, (c) construction, (d) operating an oil or gas well or

extracting petroleum or natural gas from a natural accumulation of

petroleum or natural gas, (e) extracting minerals from a mineral

resource, (f) processing (i) ore (other than iron ore or tar sands ore)

from a mineral resource located in Canada to any stage that is not beyond

the prime metal stage or its equivalent, (ii) iron ore from a mineral

resource located in Canada to any stage that is not beyond the pellet

stage or its equivalent, or (iii) tar sands ore from a mineral resource

located in Canada to any stage that is not beyond the crude oil stage or

its equivalent, (g) producing industrial minerals, (h) producing or

processing electrical energy or steam, for sale, (i) processing natural

gas as part of the business of selling or distributing gas in the course

of operating a public utility, (j) processing heavy crude oil recovered

from a natural reservoir in Canada to a stage that is not beyond the

crude oil stage or its equivalent, (k) Canadian field processing, or

(1) any manufacturing or processing of goods for sale or lease, if, for

any taxation year of a corporation in respect of which the expression is

being applied, less than 10% of its gross revenue from all active

businesses carried on in Canada was from (i) the selling or leasing of

goods manufactured or processed in Canada by it, and (ii) the

manufacturing or processing in Canada of goods for sale or lease, other

than goods for sale or lease by it. n1362

n1361 See GOS Supp QNR 1 Response at Exhibit SK-SUPP-MP-2.

n1362 Id. at Exhibit SK-SUPP-MP-3.

Manitoba's Income Tax Act also tracks the federal Income Tax Act definition of"manufacturing or processing" in defining eligibility for the tax credit. n1363

n1363 See GOM Supp QNR 1 Response at Exhibit MB-SUPP-MITC-1 for the Manitoba Income Tax Act providing for the manufacturing investment tax credit at section 7.2(1) and defining "manufacturing or processing" at section 7.2(2) as having the meaning assigned by subsection 125.1(3) of the federal Income Tax Act.

In the Preliminary Determination, we found that these programs were de jure specific because the federal Income Tax Act excludes certain enterprises or industries from the definition of manufacturing or processing, and these enterprises or industries are ineligible for the tax credit programs under investigation. The GOS and GOM argue that these programs are available to any corporate taxpayer acquiring machinery and equipment for the purpose of manufacturing or processing goods and thus, the programs are not specific because they are generally available. n1364 We disagree. In fact, both the GOM and GOS acknowledge that these programs are available to all corporate taxpayers only so long as the machinery and equipment purchased are used "primarily for the purpose of manufacturing and processing goods." n1365 Thus, both programs limit access to the tax credits by excluding the enterprises or industries engaged in the activities identified in the Income Tax Act.

n1364 See GOS Case Brief at 2; see also GOM Case Brief at 5.

n1365 Id.

In addition, the GOM and GOS argue that because the federal Income Tax Act, which defines manufacturing or processing, limits the eligibility for these tax credits by activities., not by industries, section 771(5A)(D)(i) of the Act is not applicable because the subsidy does not expressly limit access to an "enterprise or industry." n1366 We find this argument unavailing. We do not distinguish, and the law does not require that we distinguish, between an industry and an activity performed by that industry. Thus, as an example, the definition excludes farming, fishing, and logging. Therefore, enterprises or industries engaged solely in farming, fishing, and logging, are ineligible to receive these tax credits for the acquisition of equipment related to these activities. n1367

n1366 See GOS Case Brief at 3; see also GOM Case Brief at 5.

n1367 We note that the Department has previously found programs de jure specific though eligibility may have been limited by activities. For some examples of these proceedings, see the discussion for ACCA infra at Comment 69.

The GOM and GOS further argue that the Department's findings in its Preliminary Determination are inconsistent with its findings in other proceedings. We find that reliance on these cases is misplaced. The GOS and GOM specifically cite to CORE from Korea, DRAMS from Korea, and Refrigerators from Korea, arguing that these are instances where a similar widely available program has not been countervailed. However, the programs parties reference in each of these proceedings did not have specific limiting language, as is the case here with the definition of "manufacturing or processing" that we have in the federal Income Tax Act, n1368 Therefore, we do not consider them probative to our analysis of the M&P ITC and MITC. Moreover, as stated in the SAA, the Department conducts its specificity analysis on a case-by-case basis. n1369

n1368 See CORE from Korea, 71 FR at 53420, DRAMS from Korea IDM at 34, Refrigerators from Korea, 76 FR at 55052.

n1369 See SAA at 930.

The GOS and GOM further assert that record evidence indicates that a variety of companies in various industries claim the credit in any given year. n1370 However, the usage of a program is not part of a de jure analysis. Rather, the Department would consider such arguments if it was performing a de facto specificity analysis, for which there is no need in this instance. Nor is it relevant for a de jure analysis, as the GOS and GOM state, that the credits are used by a "wide range of industries." n1371

n1370 See GOS Case Brief at 3-4; see also GOM Case Brief at 6-7.

n1371 See, e.g., 19 CFR 351.502(b) (providing that the Department is not required to consider or examine whether the enterprise or industry groupings share characteristics).

Finally, the GOS and GOM argue that the M&P ITC and MITC programs are not de jure specific under section 771(5A)(D)(ii) of the Act because the legislation establishes objective criteria, eligibility is automatic, and the eligibility criteria are strictly followed and clearly set forth. n1372 We disagree. The eligibility criteria do not satisfy the statutory requirement for "objective criteria," insofar as they "favor one enterprise or industry over another." n1373 That is, the federal Income Tax Act, and thus the M&P ITC and MITC programs, favor enterprises or industries that are engaged in qualifying manufacturing and processing activities, over enterprises or industries that are not.

n1372 See GOS Case Brief at 3; see also GOM Case Brief at 6.

n1373 See section 771(5A)(D)(ii) of the Act.

Therefore, the Department continues to find these programs de jure specific within the meaning of section 771(5A)(D)(i) of the Act, because as a matter of law, in excluding enterprises or industries engaged in certain activities, access to these programs is expressly limited. Because of this finding, we need not address the parties' arguments regarding de facto specificity.

Comment 81: Whether to Include Kent Building Supplies Division's Sales in JDIL's Denominator

JDIL claims that, in the Preliminary Determination, the Department inadvertently omitted sales of subject merchandise JDIL sold through one of its divisions, Kent Building Supplies Division. JDIL asserts that these sales, as verified by the Department, should be included for the final determination. n1374

n1374 See JDIL Case Brief at 49-50.

The petitioner states that JDIL does not demonstrate the sales were not included; however, to the extent that JDIL is correct, the Department should also ensure that all relevant benefits received by Kent Building Supplies Division have been included in the relevant numerators. The petitioner further argues that if the Department changes its longstanding practice regarding tying stumpage benefits, all benefits bestowed upon cross-owned companies must be appropriately attributed to JDIL. n1375

n1375 See Petitioner Rebuttal Brief at 87.

Department's Position: JDIL provided, and the Department accepted, minor corrections at verification that included revisions to its sales of subject merchandise from the Kent Building Supplies Division. n1376 For this final determination, we have included these verified minor corrections to the sales of subject merchandise from the Kent Building Services Division during the POI to measure stumpage benefits and other appropriate subsidy programs, as necessary. n1377

n1376 See JDIL Verification Report at 1.

n1377 See JDIL Final Calculation Memorandum.

Comment 82: Whether the Department Intended to Address the AIF Program Rather than the Business Development Program in its Preliminary Determination

In the Preliminary Determination, the Department preliminarily determined that a benefit was conferred to JDIL under the AIF. n1378 The petitioner argues that the Department mistakenly identified the Business Development Program rather than the AIF program in the Preliminary Determination, n1379 The petitioner also contends that the Department should address AIF's countervailability. n1380

n1378 See JDIL Preliminary Calculation Memorandum at 7.

n1379 See PDM at 86-87; see also Petitioner Case Brief at 50.

n1380 Id. at 51.

Department's Position: In its Preliminary Determination, the Department incorrectly identified the Business Development Program as a program under which JDIL received a countervailable subsidy of 0.01 percent ad valorem. Upon further review of the record, we agree with the petitioner that this countervailable subsidy is the result of assistance provided to JDIL under the AIF, which was correctly identified in the calculation memorandum. n1381 The Business Development Program did not convey a measurable benefit. n1382

n1381 See JDIL Preliminary Calculation Memorandum at 7.

n1382 Id. at 8.

The AIF program is administered by ACOA and was established by the GOC in 2000 with the following objectives:

To increase activity in and to build capacity for innovation, research and development (R&D) which leads to technologies, products, processes, or services which contribute to economic growth in Atlantic Canada; [t]o increase the capacity for commercialization of R&D outputs; [t]o strengthen the region's innovation capacity by supporting research, development and commercialization partnerships and alliances among private sector firms, universities, research institutions, and other organizations in the Atlantic System of Innovation, and to increase their critical mass; and [t]o maximize benefits from the national R&D programs. n1383

n1383 See GOC Etal Primary QNR Response at GOC-ACOA-AIF-1-2.

Under the AIF, recipient companies operating in the Atlantic Region of Canada can receive transfer payments that are conditionally repayable, repayable, or non-repayable. n1384 JDIL reported that it received two repayable transfer payments that were outstanding during the POI under the AIF program. n1385

n1384 Id.

n1385 See JDIL Verification Report at ll.

We determine that the AIF is regionally specific under section 771(5A)(D)(iv) of the Act, because benefits administered by the GOC under the program are available only to commercial businesses and non-commercial entities operating in one or more of the four provinces defined by the program as the Atlantic Region of Canada. n1386 Furthermore, loans provided under this program constitute a financial contribution in the form of a direct transfer of funds pursuant to section 771(5)(D)(i) of the Act. In accordance with 19 CFR 351.505(a), these loans provide a benefit to the extent that the amount of interest JDIL pays on the AIF-provided loans is less than JDIL would pay under the applicable benchmark interest rate. In both the Preliminary Determination and this final determination, we calculated the benefit as the difference between the interest that JDIL paid on the loans during the POI and the interest calculated using the benchmark interest rate. n1387 To calculate a subsidy rate for JDIL, we divided the calculated benefit by the company's total sales during the POI, to determine an ad valorem rate of 0.01 percent for the AIF program. n1388

n1386 Id. at Exhibits GOC-ACOA-1 and GOC-ACOA-2A.

n1387 See JDIL Calculation Memorandum at 7.

n1388 Id.

Comment 83: Whether to Include Sales of Downstream Products by JDIL's Cross-Owned Companies

In the Preliminary Determination, we attributed the benefit from subsidies that JDIL received to its total sales. n1389 Furthermore, to calculate JDIL's benefit from the provision of stumpage for LTAR, the Department limited the sales denominator to JDIL's "total softwood lumber sales and total softwood co-product sales (i.e., products produced by sawmills) during the POI." n1390

n1389 See PDM at 17.

n1390 Id. at 51.

JDIL argues that pursuant tol9 CFR 351.525(b)(6)(iv), JDIL supplies an input (wood chips) to its cross-owned companies for production of downstream products (pulp and paper) for which purpose wood chips are primarily dedicated, and thus the Department must attribute subsidies received by JDIL to the combined sales of JDIL and its cross-owned producers of pulp and paper (minus intercompany sales). n1391 According to JDIL, not accounting for the sales of its cross-owned producers of pulp and paper would overstate the subsidy rate calculated for JDIL. n1392 JDIL further contends that limiting the sales denominator for calculation of stumpage subsidies to subject merchandise and sawmill byproducts and co-products was inconsistent with 19 CFR 351.525(b)(6)(iv). n1393 Although the Department limited the sales denominator in this way in Lumber IV., that investigation was done on an aggregate basis. JDIL argues that this investigation is evaluating specific companies, and thus the cross-ownership attribution rules are applicable. Moreover, JDIL argues that the Department attributed subsidies received by JDIL to its cross-owned paper producer in SC Paper from Canada - Expedited Review, and excluding the downstream producers' sales in this proceeding would result in an overcollection of CVD duties. n1394

n1391 See JDIL Case Brief at 44-47.

n1392 Id.

n1393 Id. at 47-49.

n1394 Id.

The petitioner counters that it is the longstanding practice of the Department to attribute subsidies from the provision of stumpage for LTAR to the sales of products produced in sawmills (lumber and byproducts), but not value added products such as further manufactured lumber products and further produced value-added products such as pulp, paper, or electricity. n1395 The Department followed this practice for the Preliminary Determination, and the petitioner contends that this practice is consistent with the ***regulation*** and thus we should continue to follow it for the final determination. n1396

n1395 See Petitioner's Rebuttal Brief at 83-85.

n1396 Id. at 85-87.

Department's Position: As noted in the Preliminary Determination, in the "Attribution of Subsidies" section, the Department did not include as part of its calculations IPP, IPL, or Irving Tissue's sales of pulp and paper products, pursuant tol9 CFR 351.525(b)(6)(iv). n1397 The Department continues to not include these companies' sales in the denominator for this final determination.

n1397 See PDM at 17.

When applying the attribution ***regulations*** at 19 CFR 351.525(b)(6)(i) - (v), the Department has recognized four exceptions to its normal rule of attributing a subsidy to the products produced by the corporation that received the subsidy. n1398 One of these exceptions is 19 CFR 351.525(b)(6)(iv) when there is cross-ownership between an input supplier and a downstream producer, and production of the input product is primarily dedicated to the production of the downstream product. Under those circumstances, the Department will attribute subsidies received by the input supplier to the combined sales of the input and downstream products produced by both corporations, minus inter-company sales. n1399 However, because in crafting the appropriate numerator and denominator we focus on the impact of the subsidy on the production of subject merchandise, n1400 the input must, generally, be an input for the production of subject merchandise or derived downstream products. n1401

n1398 See CVD Preamble, 63 FR at 65348, 65402 "Paragraph (b)(6) begins by stating a general rule, which is followed by four exceptions to that rule ..."

n1399 See 19 CFR 351.525(b)(6)(iv).

n1400 See CVD Preamble, [*63 FR at 65402*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=) ("However, we do not intend to investigate subsidies to affiliated parties unless cross-ownership exists or other information, such as a transfer of subsidies, indicates that such subsidies may in fact benefit the subject merchandise produced by the corporation under investigation.").

n1401 See, e.g.,SC Paper Investigation IDM at Comment 19 (framing "the question [as] whether the input could have been used to produce the subject merchandise exported to the United States," and concluding that "pulp is, in fact, used in the production of subject merchandise (i.e. SC paper), and, thus, necessarily could be used to produce the downstream product [i.e., paper)."); Lined Paper Products from Indonesia, at comment 3 (finding that although "downstream products" as used in 19 CFR 351.525(b)(6)(iv) is somewhat broader than"subject merchandise," the input, pulp logs, are used to make pulp, which was in turn an input into paper, including certain lined paper products, the investigated merchandise; thus the sales of the cross-owned companies providing pulp logs to the respondent were included in the denominator); Pasta from Italy 7th AR, at Attribution of Subsidies ("The issue in question in 19 CFR 351.525(b)(6)(iv) is… whether the input supplier is producing a product that is primarily dedicated to the production of the subject merchandise.").

Here, neither IPP, IPL, nor Irving Tissue received subsidies that are attributable to JDIL under 19 CFR 351.525(b)(6)(i) - (v). Indeed, JDIL acknowledged that subsidies received by IPP, IPL, and Irving Tissue do not meet any of the four exceptions for attributing to the production of subject merchandise subsidies received by cross-owned corporations under 19 CFR 351.525(b)(6)(ii) - (v), such that questionnaire responses were required from these companies. n1402 As none of these three companies fall under the exceptions to the general rule laid out in 19 CFR 351.525(b)(6)(ii) - (v), we have not expanded the denominator to include their sales.

n1402 See JDIL Case Brief at 45, footnote 146.

Although JDIL attempts to argue that we should expand its denominator because it is an "input supplier" to IPL, IPP, and Irving Tissue under 19 CFR 351.525(b)(6)(iv), the wood chips it supplies to these companies are not a primarily dedicated input to the production of our subject merchandise, softwood lumber. As discussed above, the "input product" under that provision must generally be an input for the production of subject merchandise or a derived downstream product, i.e., the "downstream products" under that provision. JDIL cites to SC Paper from Canada - Expedited Review as support for including IPP, IPL, and Irving Tissue's sales in the denominator. n1403 The Department determined in that proceeding that the wood chips that JDIL provided to IPP and IPL was an input product primarily dedicated to a downstream product, supercalendered paper, which was the investigated product. However, the subject merchandise in this proceeding is certain softwood lumber, not supercalendered paper, and although wood chips are an input for supercalendered paper, they are not an input for softwood lumber and softwood lumber is a not a downstream product of woodchips. n1404 Because we are evaluating how a subsidy benefits the production of (or provision of inputs for) the subject merchandise under investigation, the Department's attribution of subsidies received by JDIL in SC Paper from Canada- Expedited Review, a case involving different subject merchandise, and thus inputs, will not be identical to this proceeding.

n1403 See SC Paper from Canada - Expedited Review - Preliminary Results IDM at 10 (unchanged in the final results).

n1404 See SC Paper from Canada - Expedited Review IDM at Comment 34 ("Because the input is not tied only to the production of subject merchandise, and the Department does not trace subsidies, the Department allocates such the subsidies to the input producer over the sales of the input and the downstream products produced by the respondent to reflect the added value of the input on all derived downstream products produced by the corporation." Citing SC Paper Investigation IDM at Comment 19.

Because IPL, IPP, and Irving Tissue, do not provide primarily dedicated inputs for, or produce, subject merchandise, such that subsidies received by them would be attributable to JDIL under 19 CFR 351.525(b)(6)(ii) - (v), subsidies and sales from these entities are not relevant to this investigation. Therefore, we are not expanding JDIL's denominator to include the sales of IPL, IPP, and/or Irving Tissue in this investigation.

Comment 84: Whether to Continue to Find Programs Not Used or Not Measurable for Resolute

Resolute states that the Department verified that certain programs provided no countervailable benefits or were not used by the company. n1405 The GOQ states that the Department's preliminarily decision that five Quebec programs provided no measurable benefit to Resolute is correct and should be carried forward to the final determination. n1406 Similarly, the GOQ states that the Department's preliminarily non-use findings for Resolute were correct and should be confirmed in the final determination. n1407 No other party provided comments or rebuttal comments on this issue.

n1405 See Resolute Case Brief at 55.

n1406 See GOQ Case Brief at 71-79.

n1407 Id. at 80.

Department's Position: We agree and continue to find that certain programs were not used by or did not provide countervailable benefits to Resolute. See Appendix II.

Comment 85: Whether the Department Was Correct to Not Countervail Certain Ontario Programs

Resolute states that the Department correctly did not countervail Ontario's NIER and FSPF because assistance under each program is tied to sales of non-subject merchandise (i.e., pulp and paper). n1408 No other party provided comments or rebuttal comments on this issue.

n1408 See Resolute Case Brief at 52-54.

Department's Position: We agree and continue to find that the programs provide assistance tied to non-subject merchandise.

Comment 86: Whether Discrepancies Identified at Resolute's Verification Should Be Corrected

The petitioner states that the Department identified discrepancies in the reported subsidy amounts received by Resolute under the "GOQ's Purchase of Electricity under the PAE 201101" and "Cooperative Education Tax Credit" programs at verification and should use the corrected figures for the final determination. n1409 Resolute acknowledged the discrepancies in its rebuttal brief. n1410

n1409 See Petitioner Case Brief at 70; see also Resolute Verification Report at 16-19.

n1410 See Resolute Rebuttal Brief at 10.

Department's Position: We agree and used the corrected figures as verified in Resolute's final calculations. n1411

n1411 See Resolute Final Calculation Memorandum.

Comment 87: Whether the Department Was Correct To Not Countervail Certain Quebec Programs

Resolute states that the Department correctly did not countervail Quebec's CEP, namely, the ARTT and CAR initiatives, because they are generally available and do not satisfy the specificity requirement. n1412 The GOQ states that the CEP is neither de jure nor de facto specific to the softwood lumber industry and, therefore, the Department should continue to determine that the CEP is not countervailable. n1413 No other party provided comments or rebuttal comments on this issue.

n1412 See Resolute Case Brief at 54-55.

n1413 See GOQ Case Brief at 75-76.

Department's Position: We agree, and continue to find the CEP to be not countervailable.

Comment 88: Whether the Department Should Use Tolko's Final Stumpage Prices and Updated Supplemental Data for the Final Determination

In the Preliminary Determination, the Department found that the stumpage rates charged for Crown-origin standing timber by the GBC constitute the provision of a good for LTAR. n1414 Regarding Tolko, specifically, the Department based its preliminary calculations on the values Tolko reported in Table 1A of Tolko's Primary QNR Response. n1415 Tolko argues that these data fail to reflect the final stumpage prices charged by the GBC, net of final adjustments made after the POI. Therefore, for the final determination, Tolko argues that the Department should use the final stumpage values reported by Tolko for the timbermarks included in Table IC of its Primary QNR Response. For log purchases that Tolko originally reported in Table 2, but that were later reported as stumpage payments in Tables B2, E, and H in response to the Department's request for a change in reporting methodology after the Preliminary Determination, Tolko argues that the Department should similarly use Tolko's reported "final" stumpage payment rather than the values reported as its "accrued" stumpage payment. n1416 Finally, Tolko argues that, other than the log purchases reported in Table D of Tolko's supplemental questionnaire response of May 30, 2017, n1417 all transactions reported in all other tables should be treated as stumpage transactions rather than as log purchases. n1418

n1414 See PDMat55.

n1415 See Tolko Preliminary Calculation Memorandum at 7-10.

n1416 See Tolko Case Brief at 15-17; see also Tolko Supp QNR 2 Response, Part 1.

n1417 See Tolko Supp QNR 2 Response, Part 1.

n1418 See Tolko Case Brief at 14-15.

Department's Position: The "final" stumpage prices reported in Table 1C that Tolko argues the Department should use for purposes of calculating the benefit from the GBC's provision of stumpage for LTAR were reported by Tolko by going outside the POI for the final stumpage values, and attributing adjustments made to stumpage volumes and values by the province of British Columbia to volumes delivered during the POI. Tolko maintains that the Department should not continue to use "interim" prices that were subject to later adjustment.

However, regardless of the merits of Tolko's argument, the record does not contain the information needed to make the adjustments using Table 1C as Tolko proposes. Specifically, Tolko did not report the costs associated with the purchases reported in Table 1C. In Table 1A, submitted prior to the Preliminary Determination, Tolko did report costs associated with its stumpage transactions. Furthermore, after the Preliminary Determination, when the Department requested that Tolko submit additional tables and provide additional and more detailed cost reporting, Tolko did not update its Table 1C to reflect the additional cost information subsequently reported. n1419 Tolko has not proposed a way for, or provided the information that would enable the Department to translate or transcribe the costs reported in Tables A and Bl to Table 1C. Moreover, the burden is on a respondent to demonstrate the appropriateness of an adjustment that is to its benefit. n1420 Again, Tolko provided no cost information for Table 1C and therefore the Department finds that it cannot use the information provided in this table.

n1419 See Tolko Supp QNR 2 Response, Part 1.

n1420 See SAA at 829; see also Ribbons from the PRC IDM at note 83 (stating "[t]he burden to establish entitlement to an adjustment is on the party seeking the adjustment because that party has access to the necessary information.").

Additionally, Tolko argues that the Department should use Tolko's reported "final" stumpage payments rather than the "accrued" stumpage payments it also reported in Tables B2, E, and H of its May 30th questionnaire response. Tolko explained that the accrued value column of these tables shows the amounts for stumpage charges it accrues on its books. Tolko does this in situations where Tolko is not the tenure holder but either pays the stumpage fees directly because it is ultimately the party with liability to the Crown, or where Tolko elected to pay the stumpage on behalf of the tenure holder where it purchased logs from a reseller. n1421 The "final" stumpage values reported by Tolko in these tables represent the average of the rates on HBS invoices by timbermark. Yet, these "final" stumpage values are not recorded in Tolko's books and records contemporaneously with the stumpage purchases. Rather, the accrued value is initially entered into Tolko's Contractor Pay System; the record does not show the timing of the entry into Tolko's system of the "final" values. n1422 Furthermore, because the "final" value reported is an average of all volumes and values for each timbermark, in many instances those volumes and values may be based on invoices that were issued outside of the POI.

n1421 See Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.

n1422 See Tolko Supp QNR 2 Response, Part lat 31 (Tolko notes that it is providing the final stumpage values, but gives no indication as to when these values enter Tolko's financial systems).

In this final determination, we have limited our analysis to invoices received within the POI for purchases also made within the POI. We find for purposes of this final determination that this methodology best reflects the benefit conferred on Tolko during the POI, considering that Tolko's "final" reported stumpage values may be the result of adjustments to and averages of invoices occurring outside the POI.

Finally, Tolko argues that only the purchases reported in Table D should be treated as log purchases. All of the purchases reported in Tables A, Bl, B2, E and H of Tolko's May 30th supplemental response should be analyzed as stumpage transactions, according to Tolko. We disagree, in part. In Table H, Tolko reported log purchases from a reseller, for which Tolko paid the stumpage fees directly to the Crown even though they were not the tenure holder and not legally obligated to pay the stumpage fees to the Crown. n1423 We consider that these log purchases do not represent stumpage purchases from the Crown, because in these instances, Tolko has purchased harvested logs, and we are treating them as log purchases for purposes of the Log Export Restraint analysis. n1424 Perhaps, most importantly, Tolko states, "if not for the stumpage remittance, these log purchases would be on Table D" (emphasis Tolko's). n1425 This statement demonstrates that Tolko itself had no legal obligation to pay the stumpage fees to the Crown on these transactions, and thus these transactions constitute log purchases. That Tolko opted to pay the stumpage fees on these purchases does not require that we shift our examination and treat these purchases as anything other than what they are - purchases of logs.

n1423 See Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.

n1424 The Department is also moving certain transactions from Table B2 to Table D. These are transactions for which Tolko did not pay stumpage. Tolko agrees with the Department that these transactions should be moved to Table D. Tolko Case Brief at note 33.

n1425 See Tolko Supp QNR 2 Response, Part 1 at Exhibit 19.

Accordingly, for purposes of this final determination, the Department considers Tables D, H, and parts ofB2 as log purchases and Tables A,B1, parts ofB2 and E as stumpage purchases.

Comment 89: Definition and Examples of Finished Products in Scope Language

In the Preliminary Scope Memorandum, the Department determined that finished products are outside the scope of these investigations, and proposed additional scope language to provide interested parties guidance as to what constitutes a finished product. n1426 Canfor, the GOC, RILA and IKEA do not oppose the Department's decision to adopt a definition for finished products, but request that the Department add additional language to the scope identifying particular finished products. n1427 The petitioner agrees that finished products are outside the scope of these investigations, and supports the Department's proposed definition. However, the petitioner does not agree that it is appropriate or necessary to list all finished goods that have been determined to be out of scope in the language of the scope itself. n1428

n1426 See Preliminary Scope Memorandum at Comment 6.

n1427 See Canfor Scope Brief at 2; Canadian Parties Joint Scope Brief at 6; RILA Scope Brief at 2; IKEA Scope Rebuttal at 2.

n1428 See Petitioner Scope Rebuttal atl7-18.

Department's Position: In the Preliminary Scope Memorandum, the Department preliminarily determined that "finished products" are outside the scope of these investigations. n1429 Of those who commented on the administrative record regarding this issue, each party agreed with the conclusion that "finished products" are not subject to the scope of these investigations. In determining the appropriate language to include in the scope of the investigations to define a finished product, we proposed the following language be added directly to the scope:

n1429 See Preliminary Scope Memorandum at Comment 6.

Finished products are not covered by the scope of these investigations.

For the purposes of this scope, finished products contain, or are

comprised of, subject merchandise and have undergone sufficient processing

such that they can no longer be considered intermediate products, and such

products can be readily differentiated from merchandise subject to these

investigations at the time of importation. Such differentiation may, for

example, be shown through marks of special adaptation as a particular

product. The following products are illustrative of the type of

merchandise that is considered "finished," for the purpose of this scope:

I-joists; assembled pallets; cutting boards; assembled picture frames;

garage doors. n1430

n1430 Id.

No interested party opposed the inclusion of such clarifying language. First, the language explains clearly our understanding of what characteristics describe such products: 1) they contain, or are comprised of, subject merchandise and have undergone sufficient processing such that they can no longer be considered intermediate products; and 2) such products can be readily differentiated from merchandise subject to these investigations at the time of importation.

Second, recognizing that differentiation of finished products from other products might not always be obvious, we added language that explained that "such differentiation may, for example, be shown through marks of special adaption as a particular product." There are many different types of finished products, and we fully recognize that not all finished products will be identified through unique "marks of special adaption," but nonetheless, we have provided this language to further clarify the scope.

Finally, we identified several products that fall within the category of"finished products," and emphasized that this list is simply illustrative: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors.

No party challenges the Department's proposed descriptive characteristics or "differentiation" example. With respect to the illustrative list, however, RILA and IKEA request that various additional terms and language be added to the scope to prevent confusion regarding the scope status of particular products. n1431 Specifically: 1) RILA and IKEA request that furniture kits be added to the list of illustrative out-of-scope products; n1432 and 2) RILA further requests that butcher-block countertops, assembled wood toys, assembled wood blinds, clothes hangers, tableware, trays, wall art, and marquetry be added to the list. n1433

n1431 See RILA Scope Brief at 2; IKEA Scope Rebuttal at 2. Canfor and Central Canada also request that the language of the scope be modified to address a particular specification of I-joists. See Canfor Scope Brief at 2; Central Canada Scope Brief at 12. However, we address those comments separately below.

n1432 See IKEA Scope Rebuttal at 2; RILA Scope Brief at 2.

n1433 See RILA Scope Brief at 5. RILA also requests that "craft kits" be excluded from the scope of these investigations as finished goods. We address this request separately, below.

We agree with the parties' arguments that one of the Department's goals in defining the scope of an investigation is to make the scope clear and administrable. We also agree that if we included the list of finished goods proposed by RILA and IKEA, it might provide a greater amount of certainty upon importation for those products specifically. However, we also believe that adding even more products to the scope could result in a greater degree of confusion with respect to all other finished products not listed in the scope.

The products listed above, which are highlighted by RILA were explicitly considered by the Department in our Preliminary Scope Memorandum, and were determined to be out-of-scope. n1434 We explained that:

n1434 See Preliminary Scope Memorandum at Comment 6.

The Department finds that the majority of the products identified as

"finished goods" by the parties - including assembled pallets; assembled

trusses; assembled garage doors; assembled door frames; assembled window

frames; assembled I-joists, open-webbed floor joists; edge-glued wood;

cross-laminated timber; assembled furniture; butcher block countertops;

cutting boards; assembled wood toys; assembled wooden frames for

paintings, photographs and mirrors; assembled wood blinds; clothes

hangers; tableware; trays; wall art; and marquetry - have all been

processed to such an extent that they are individually identifiable as

"finished products." n1435

n1435 Id. (internal citations omitted).

The Department's position with respect to the products identified above remains unchanged from the AD Preliminary Determination. Accordingly, we have determined that these products are out-of-scope and therefore no further clarification is necessary. To the extent that RILA is concerned that there is any ambiguity in the scope because its products are not specifically enumerated in the list of"illustrative examples," we are expressly determining in this final determination that those products meet the finished products exclusion and should be excluded from the scope of these investigations. We believe such a determination provides sufficient certainty with respect to those products.

We provided five illustrative examples in the proposed scope which we believe are sufficiently diverse to provide a wide-range of examples of finished products. The petitioner supported those examples, and we continue to believe those five examples are appropriate. If we added additional examples, we are concerned that the list would begin to appear less like an illustrative list, and more like a comprehensive summary of all the finished products excluded from the scope - which is not our intention in providing a few illustrative examples in the scope language. For obvious reasons, given the number and variety of finished products, the Department cannot list every conceivable finished product in the scope of the investigation itself.

In addition, with respect to RILA's and IKEA's request that furniture kits be added to the list of illustrative out-of-scope products, we preliminarily determined, as stated in the Preliminary Scope Memorandum that "finished furniture kits are not covered by the scope of these investigations." n1436 Again, we are expressly determining in this final determination that these kits also are covered by the finished products exclusion and conclude that such a determination provides sufficient certainty with respect to these products. Accordingly, we determine that it is unnecessary to add these products to the list of illustrative examples in the language of the scope itself.

n1436 Id. at Comment 15.

In addition to RILA's and IKEA's arguments that the Department should add to its illustrative list products which we had already preliminarily determined to be finished goods in the Preliminary Scope Memorandum, the GOC argues that the Department should also expand the list to include additional products which the Department did not preliminarily determine to be finished goods. Specifically, the GOC asserts that "[unassembled parts or components - if sufficiently processed so that they may be used solely for their intended purposes - also qualify as "finished products' under the reasoning articulated by the Department" n1437 and should be included in the illustrative example list. We disagree. As a preliminary matter, the GOC's proposed interpretation of the finished products provision contradicts the plain language of the scope, which states that "[c]omponents or parts of semi-finished or unassembled finished products made from subject merchandise that would otherwise meet the definition of the scope above are within the scope of these investigations." Furthermore, the GOC misstates the Department's reasoning with respect to finished products. We stated that products are "finished" when they have "undergone sufficient processing such that they can no longer be considered intermediate products, and such products can be readily differentiated from merchandise subject to these investigations at the time of importation," n1438 The GOC's argument ignores the second portion of this sentence: to constitute a finished good, merchandise must be readily differentiable from subject merchandise at the time of importation. Furthermore, as the Department has noted, there are numerous types of components which fall squarely within the scope of these investigations. n1439

n1437 See Canadian Parties Joint Scope Brief at 6. The GOC also summarily asserts that numerous additional products constitute finished goods which were not preliminarily determined by the Department to be finished goods in the Preliminary Scope Memorandum, and asserts that they should be included in the illustrative list of finished products. Specifically, the GOC claims that fence pickets and fencing materials, truss kits, pallet kits, window and door frame components, flooring products, tongue and grooved products that are end-matched, tongue and grooved paneling, certain siding, pre-cut bridging, pre-finished products of a certain thickness, ripped and chopped softwood lumber items, and landscape ties are finished products. We address those arguments separately, below.

n1438 See Preliminary Scope Memorandum at Comment 6 (emphasis added).

n1439 See, e.g.preliminary Scope Memorandum at Comments 16 (window and doorframe components), 21 (notched stringers) and 34 (bed-frame components).

Finally, the GOC also asserts that, pursuant to the General Rules of lnterpretation that govern the HTSUS, an "incomplete or unfinished article" may be classified under the heading for a finished product if it "has the essential character of the complete or finished article." n1440 However, the Department is not required to follow the HTSUS General Rules of lnterpretation in defining the scope of its investigations, and indeed, in defining the scope of our investigations, the HTSUS categories are provided for guidance only. As the Department explained in the language of the preliminary scope, "[a] lthough these HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these investigations is dispositive." n1441 Here, the written description of the scope is clearly intended to cover components. The fact that such goods might be classified in a certain manner under the HTSUS does not alter our analysis.

n1440 See Canadian Parties Joint Scope Brief at 8.

n1441 See AD Preliminary Determination, [*82 FR 29833, 29836.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5NX6-6BR0-006W-83JB-00000-00&context=)

For the reasons stated, we continue to find that finished products are outside the scope of these investigations. Additionally, the Department will not modify the language regarding finished products in the manner requested by RILA, IKEA, or the GOC.

However, in light of parties' expressed concerns regarding CBP's administration of this scope, in addition to our standard CBP instructions, we will provide CBP with a list of products which we have determined are finished goods, and thus not covered by the scope of these investigations.

Comment 90: Exclusions requested for Certain Types of Lumber Harvested from Western Red Cedar, Douglas Fir, and Hemlock Trees

In the AD Preliminary Determination, the petitioner did not agree to, and the Department did not grant, OCFP's request to exclude certain types of high-value, fine-grain lumber harvested from Western Red Cedar, Douglas Fir, and Hemlock trees and based on "minimum dollar values." n1442

n1442 See OCFP Scope Brief at 1-10.

OCFP argues that the Department should grant its exclusion request because the imports described in OCFP's narrowly-defined scope exclusion request do not ***compete*** with U.S. production in commercially meaningful quantities. Also, despite the petitioner's assertion that allowing this exclusion raises circumvention concerns, OCFP argues that its scope exclusion request is highly similar to the exclusion for wood harvested and produced in the Atlantic Provinces to which the petitioner has agreed. OCFP notes that judicial precedent established that the Department retains the ultimate responsibility for determining the scope of these investigations, and that the circumstances of this case warrant that the Department grant OCFP's request.

The petitioner notes that the products for which OCFP seeks an exclusion are types of softwood lumber that fall within the scope of these investigations, and no party has argued otherwise. The petitioner acknowledges that it has stated that it would be willing to consider a scope exclusion from OCFP if such an exclusion were administrable and sufficient to address issues of circumvention. However, the petitioner asserts that OCFP's proposed exclusion does not currently meet either of those criteria and is different from the exclusion of lumber certified by the Atlantic Lumber Bureau. The petitioner therefore opposes OCFP's request.

Department's Position: We have not granted OCFP's exclusion request. As noted, the alleged "fine-grain" softwood lumber for which OCFP seeks an exclusion is lumber produced from Douglas Fir, Western Red Cedar, and Hemlock ' all species of softwood lumber. The scope does not provide for exclusions based solely on species of softwood lumber. Likewise, the scope provides no exceptions for softwood lumber based on price. Thus, all products for which OCFP has requested an exclusion are covered by the scope of these investigations.

With respect to OCFP's argument that, despite opposition from the petitioner, the Department has the authority to exclude products from the scope, we do not disagree that there are specific situations in which the Department can modify a proposed scope over a petitioner's objections. However, we do not find that such a situation exists with respect to OCFP's merchandise.

The CAFC has explained that a "purpose of the petition is to propose an investigation," while a "purpose of the investigation is to determine what merchandise should be included in the final order." n1443 In defining the scope of an order, the CAFC has explained that the Department has a "large" amount of discretion to determine "the appropriate scope" of an order to ensure that it "will be effective to remedy" the dumping or CVD subsidies determined to exist during an investigation. n1444

n1443 See [*Duferco Steel, Inc., 296 F. 3d 1087, 1089.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:468K-32B0-003B-94KH-00000-00&context=)

n1444 See [*Mitsubishi I, 700 F. Supp. 538, 556,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RWF-M8M0-003R-S027-00000-00&context=) aff'd by Mitsubishi II, 898 F.3d at 1583 (finding that the Department "has the authority to define and/or clarity what constitutes the subject merchandise to be investigated as set forth in the petition … taking into consideration such factors as.. .the known tactics of foreign industries attempting to avoid a countervailing duty order"); see also S. Rep. No. 96-249 (1979), at 45 (stating that "domestic petitioners and the administrators of the law have reasonable discretion to identify the most appropriate group of products for purposes of both the subsidy and injury investigations"); [*Smith Corona, 796 F. Supp. 1532, 1535;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-88D0-003S-N1M2-00000-00&context=) [*Allegheny Bradford, 342 F. Supp. 2d 1172, 1187-88;*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CK6-RR50-003S-N015-00000-00&context=) [*Torrington, 745 F. Supp. 718, 721,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1V30-003R-S05M-00000-00&context=) aff d [*938 F.2d 1276 (Fed. Cir. 1991)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4V-NF80-003N-41YP-00000-00&context=) (holding that in certain circumstances the Department may "narrow" the definition of the scope as proposed in a petition as long as such that modification is based on record evidence and not "unreasonable"; finding the existence of five classes or kinds of merchandise, rather than one, as alleged in the petition).

While the Department possesses the authority to determine the scope of an investigation, the Department's standard practice is to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding. Thus, in establishing the scope of an investigation, the Department strives to craft a scope that both includes the specific products for which the injured party, the petitioner, has requested relief, and excludes those products which would otherwise fall within the general scope physical description, but for which the petitioner does not seek relief. n1445 Thus, the Department generally defers to the intent of the petition, fulfills the Department's statutory mandate to provide, where appropriate, the relief requested by the petitioning industry, n1446 and, "absent an overarching reason to modify the scope in the petition, the Department accepts [the scope]" as written. n1447

n1445 See, e.g., Nails from the PRC, [*73 FR 33977, 33979;*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4SRT-W2H0-006W-84CH-00000-00&context=) Spring Table Grapes, [*66 FR 26831, 26832-33.*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4325-5400-006W-81CC-00000-00&context=)

n1446 See, e.g., Narrow Woven Ribbons from the PRC, [*75 FR 7244, 7247,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4YDS-8370-006W-836P-00000-00&context=) unchanged in Narrow Woven Ribbons from Taiwan.

n1447 See, e.g., Circular Welded Austenitic Stainless Pressure Pipe from the PRC Prelim, [*73 FR 51788, 51789,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4TCH-09X0-006W-831B-00000-00&context=) unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the PRC Final.

There are, however, as OCFP argues, situations in which public policy requires that the Department modify the petitioner's proposed scope. In those occasions, the leading reasons for such modification are to ensure that the scope can be sufficiently administered and to prevent the scope from being susceptible to circumvention and evasion. n1448

n1448 See, e.g., Steel Wheels from the PRC AD IDM at Comment 1.

The petition scope did not exclude "fine-grain" lumber harvested from Douglas Fir, Hemlock, and Red Cedar trees; nor did it exclude certain products based on dollar value. Furthermore, the petitioner has continuously stated on this record that due to difficulty in identifying species, grade and value, n1449 there are significant circumvention concerns which would accompany such an exclusion, and neither OCFP, nor any other party, has provided sufficient evidence that there exists a method for both instituting such an exclusion, and ensuring that the threat of circumvention through such an exclusion is extinguished. Thus, we determine that this is not an appropriate situation in which to modify the proposed scope, especially in light of the petitioner's legitimate circumvention concerns.

n1449 As noted by the petitioner, grade, value, and species are all difficult characteristics to confirm. This was attested to by the association on which OCFP wanted to rely to verify these characteristics for the purpose of administering this exclusion. See OCFP Comments - Scope 3 at 2-4.

The Department received numerous comments in this investigation requesting that the Department modify the proposed scope against the expressed intentions of the petitioner. Tellingly, however, no party, including OCFP, cited to examples in which the Department made a modification outside of the context of concerns of administration or evasion. To be clear, however, the Department's practice is only to modify the scope as proposed by the petitioner if that proposed scope cannot be administered without difficulty or there are evasion concerns as a result of the proposed scope language. The Department's practice is not, as it appears some parties have argued, to allow for an exclusion not supported by the petitioner simply because the hypothetical exclusion of a product could be administered with little difficulty and the possibility of evasion is allegedly low. In other words, in the vast majority of cases, the Department will defer to the petitioner's proposed language, and only consider modifying that language when the proposed scope, itself, raises certain concerns with the Department and CBP. n1450 As that is not the situation in this case, we agree with the petitioner that OCFP's merchandise is covered by the scope of these investigations, and an exclusion is not warranted.

n1450 See, e.g., Narrow Woven Ribbons from the PRC, [*75 FR 7244, 7247,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4YDS-8370-006W-836P-00000-00&context=) unchanged in Narrow Woven Ribbons from Taiwan', see also Lumber IV Final AD Determination IDM at "Scope Issues."

Comment 91: Previous Scope Determinations

In the AD Preliminary Determination, the Department stated that it would not adopt scope exclusions simply based on a product's status in the earlier softwood lumber proceedings or under the 2006 SLA n1451 and noted that the scope coverage of Lumber IV and the 2006 SLA is not determinative of the scope of these investigations. n1452

n1451 See 2006 SLA. See Petition, Volume I, Exhibit 63.

n1452 See Preliminary Scope Memorandum at Comment 4.

While acknowledging that the Department's prior scope determinations in Lumber IV are not dispositive of the scope issues in these investigations, the GOC claims that the Department is still required to explain its reasoning for deviating from prior scope determinations and cites to several decisions by the CIT that it claims supports its contention. n1453

n1453 See [*Springwater Cookie, 20 C.I.T. 1192*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-8070-003S-N0DN-00000-00&context=) where the CIT stated "Commerce has not expressed any intention of or rational reasons for deviating from its method of analysis in similar cases." See also [*Allegheny Bradford, 342 F. Supp. 2d 1172*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CK6-RR50-003S-N015-00000-00&context=) where the CIT explained that the Department has a "general obligation to follow prior, similar scope determinations," and noted that adherence to prior scope determinations "is premised in part on the fact that the prior decisions are indeed determinations, with formal procedures to ensure reliable results."

The petitioner states that the Department did not err in its preliminary scope determinations for the simple reason that the scope of these investigations is different from that in earlier softwood lumber proceedings and under the SLA 2006, and as such, the factual findings of these proceedings are not directly applicable to the current investigation.

Department's Position: The GOC's arguments are legally incorrect. Section 19 CFR 351.225(k)(l) of the Department's ***regulations*** require that after an investigation is completed, and the scope of an order has been defined, if a party requests a scope ruling, the Department will consider as part of that scope ruling "prior determinations" of the agency. Accordingly, in the bevy of cases cited by the GOC, the CIT held repeatedly that the Department must look to its prior scope determinations and rulings arising out of the same AD or CVD order and consider those determinations to "either conform to its prior norms and decisions or explain the reason for its departure from such precedent." n1454 The Court has not held, however, that the Department "must consider its prior scope rulings," as the GOC claims, arising out of former, differently-worded scopes from different investigations with different petitioners and different injury determinations, and "articulate why" it is making a determination "departing from those rulings." n1455 The GOC claims that the Department "contravenes substantial CIT precedent," without understanding what that precedent means or the basis for that precedent in the first place. n1456 It is simply not true that the Department "reversed course" from prior lumber scope rulings or "departed" from "prior scope determinations," n1457 because these are new investigations with a new petitioner, and the products allegedly causing harm differ from the products allegedly causing harm in previous lumber investigations.

n1454 See [*Russ Berrie, 57 F. Supp. 2d 1184*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3X10-BC00-003S-N00G-00000-00&context=) where the CIT determined that the Department's analysis of its prior similar scope determinations "satisfi[ed] the principle of administrative law that an agency must either conform to its prior norms and decisions or explain the reason for its departure from such precedent."

n1455 See Canadian Parties' Joint Scope Brief at 11-12.

n1456 Id. at 12.

n1457 Id. at 14, 17.

Put another way, the underlying facts in Lumber IV are not the facts before us in these investigations,just as the facts in the 2006 SLA were not the same as the facts before us in these investigations. Thus, the GOC is incorrect in claiming that the Department is required to distinguish between its treatment of certain products in the context of the scope of these investigations when compared to the treatment of such products in Lumber IV and the 2006 SLA.

In any case, in the Preliminary Scope Memorandum, we set forth the reasons why each of the following products in question are covered by the scope of these investigations. Primarily, the reason was simple: the merchandise falls within the description of the scope of these investigations, and the party alleged to be harmed by dumping and subsidization, the petitioner, has not agreed to an exclusion for these products:

\* Fence Pickets and Fencing Materials (discussed in detail in the

    Preliminary Scope Memorandum at Comment 11),

\* Truss Kits (Comment 12),

\* Pallet Kits (Comment 13),

\* Home Package Kits (Comment 14),

\* Notched Stringers (Comment 21) and

\* Box-spring frame components (Comment 34). n1458

n1458 See Preliminary Scope Memorandum at Comments 11-14, 21, and 34.

In Lumber IV, the petitioner proposed a scope in the underlying investigations and agreed to modifications to the scope that resulted in exclusions for each of the products listed above that are now covered by the scope of these current investigations. n1459 While at times, the stated reason for the non-coverage of certain products in Lumber IV is stated to be that the scope does not cover the merchandise in question n1460 and at other times the merchandise is stated to be excluded, n1461 what is clear is that the petitioner articulated that it had no interest in covering that merchandise in Lumber IV and that the Department ultimately stated that it was excluding each of these products in line with the petitioner's wishes. However, here, the petitioner has explicitly stated in its rebuttal case brief n1462 and throughout these proceedings, that the scope of these investigations is intended to cover each of the products listed above which were not covered in Lumber IV.

n1459 See Lumber IV Prelim Determination, [*66 FR 43186, 43187*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:43S6-C9W0-006W-80BW-00000-00&context=) (August 17, 2001).

n1460 Id.

n1461 See Memorandum, "Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests," dated March 12, 2002 (Lumber IV Preliminary Scope Memorandum) at Appendix II. This memorandum was included in the Preliminary Scope Memorandum at Attachment III. See also Lumber IV AR Final at section entitled "Scope of the Order."

n1462 See Petitioner Rebuttal Brief at 17-19 and 46-59.

With regard to product-specific arguments, the GOC claims that truss kits are finished products and that the Department acknowledged this in Lumber IV when it stated that "[p]etitioners accept the principle that pallets and "legitimate' pallet kits are outside the scope of these investigations" and the Department's statement that "truss kits are finished trusses unassembled." n1463 However, the GOC has taken these statements out of context. As the memorandum cited by the GOC indicates, the petitioner had already agreed to exclude truss kits in Lumber IV and the quotations cited by the GOC were generated from a discussion of how to create an administrable exclusion. n1464 If the truss kits had already been found to be outside of the scope, a discussion as to how to exclude the truss kits would be unnecessary.

n1463 See Canadian Parties' Joint Scope Brief at 14-16.

n1464 See GOC Comments Scope 1 at Attachment 4 (containing a memorandum titled, "Scope Clarification in the Antidumping and Countervailing Duty Investigations on Softwood Lumber from Canada").

With respect to the GOC's "finished products" claim, the GOC has cited to no analysis undertaken by the Department in Lumber IV to determine whether truss kits are finished products and thus outside the scope. On the other hand, we did conduct a finished product analysis in the Preliminary Scope Memorandum of these investigations. n1465 The Department preliminarily determined in these investigations that truss kits do not qualify as finished products, but instead "that truss kits contain minimally-processed lumber that is explicitly covered by the scope." n1466 We further cited to industry descriptions of truss kits demonstrating that they consist primarily of dimension lumber. n1467 Thus, we explained in the Preliminary Scope Memorandum the reasons for our finding that certain components of truss kits are not finished products and are thus covered by the scope of these investigations.

n1465 See Preliminary Scope Memorandum at Comment 12.

n1466 Id.

n1467 Id. at Comment 12.

In its scope brief, the GOC did not specifically address the Department's analysis and reasoning in the Preliminary Scope Memorandum for why we find truss kits to be within the scope of these investigations. Instead, it merely stated that it does not agree with the conclusion of this analysis and that "legitimate truss … kits are not intended to be within the scope of these investigations." n1468 For the reasons we have provided, that conclusion is not supported by the expressed intentions of the petitioner, nor by the record evidence. Accordingly, we have determined for the purposes of this final determination that truss kits are covered by the scope of these investigations.

n1468 Canadian Joint Scope Brief at 15. We note that the Structural Component Building Association (SCBA) commented on the AD Preliminary Determination with respect to trusses. See SCBA Scope Comments. Because SCBA's comments do not address the Department's conclusions regarding the status of assembled trusses as finished products, we do not further consider SCBA's comments here.

The GOC has stated that its arguments regarding truss kits apply equally to pallet kits. Just as we explained why truss kits were not finished products and were covered by the scope of these investigations, we also did so with regard to pallet kits in the Preliminary Scope Memorandum, explaining that pallet kits consist largely of dimensional lumber. n1469 We further noted that the scope states that it covers softwood lumber that may be classified by CBP as pallet components and also explicitly states that it covers notched stringers, which are the main component of pallets. n1470 Just as with truss kits, another difference between these investigations and those in Lumber IV is that here the petitioner has explicitly stated that it does not agree to an exclusion for pallet kits and that pallet kits are in-scope merchandise. In addition, in its brief, the GOC also did not address any of the details or arguments set forth in the Preliminary Scope Memorandum that were the basis for our finding pallet kits to be covered by the scope of these investigations. Instead, it argued only that it disagreed with this finding and that "legitimate … pallet kits are not intended to be within the scope of these investigations." n1471 For the reasons we have provided, that conclusion is neither supported by the expressed intentions of the petitioner, nor by the record evidence. Accordingly, we have determined for purposes of this final determination that pallet kits are also covered by the scope of these investigations.

n1469 See Preliminary Scope Memorandum at Comment 13.

n1470 Id.

n1471 Id. at 15.

Comment 92: Whether Certain Products are Finished Products

In the Preliminary Scope Memorandum, the Department rejected arguments that it exclude the products enumerated below. We stated that the products were covered, most of them explicitly, by the scope of these investigations and that the factors that the GOC identifies as distinguishing features of the products in question did not differentiate the products from softwood lumber covered by the scope of these investigations.

We did not find any of the following products to meet our definition of finished products, and we preliminarily determined these products were within the scope of the investigations. n1472 We also noted that the scope did not provide for an exclusion for any of the products identified below, and that the petitioner had not supported exclusions for these products:

n1472 See Preliminary Scope Memorandum at Comment 6.

\* Fence Pickets and Fencing Materials (discussed in detail in the Preliminary Scope Memorandum at Comment 11);

\* Truss Kits (Comment 12);

\* Pallet Kits (Comment 13);

\* Window and door frame components (Comment 16);

\* Flooring Products (Comment 17);

\* Tongue and Grooved Products That are End-Matched (Comment 18);

\* Tongue and Grooved Paneling (Comment 19);

\* Certain Siding (Comment 20);

\* Notched Stringers (Comment 21);

\* Pre-Cut Bridging (Comment 22);

\* Pre-Finished Products of a Certain Thickness (Comment 23);

\* Ripped and Chopped Softwood Lumber Items (Comment 24); and

\* Landscape Ties (Comment26). n1473

n1473 Id. at Comments 11-13, 16-24, and 26.

The GOC argues that all of these products meet the Department's definition of finished products and thus, based on the Department's acknowledgement at Comment 6 of the Preliminary Scope Memorandum that finished products are outside the scope of these investigations, these products should be excluded. The GOC argues that the petitioner's main motivation for not excluding the products at issue is due to alleged circumvention and/or administrability concerns, which are unfounded and thus cannot be a basis for a refusal to exclude the products at issue.

The petitioner states that none of the products in question are finished products, that the scope covers each product, and that the scope as proposed was intended to cover each of these products. Additionally, the petitioner states that an exclusion for any of the products in question would pose a particularly high risk of circumvention and would present unique administrability challenges for CBP.

Department's Position: All of these products, which were found to be in-scope merchandise in the AD Preliminary Determination, n1474 are covered by the scope of the investigations, and are not finished products outside the scope of these investigations.

n1474 Id. We note that SCBA commented on the AD Preliminary Determination with respect to wood paneling. See SCBA Scope Comments at 1-4. Because SCBA's comments do not address the Department's discussion regarding the status of wood paneling, we do not further consider them here.

We disagree with the GOC's blanket statement that the above-referenced products meet the definition of finished products set forth in Comment 1. As noted above, in the Preliminary Scope Memorandum we provided individual explanations addressing why each of the products under discussion here are covered, and thus do not meet our definition of finished products. n1475 The GOC did not address the reasoning and analysis we set forth in the Preliminary Scope Memorandum concerning why these products are covered by the scope in its brief. Accordingly, our decisions regarding these products remain unchanged.

n1475 See Preliminary Scope Memorandum at Comments 11-13, 16-24, and 26.

While the GOC speculates that the petitioner's main motivation for not excluding the products in question is due to unjustified circumvention concerns, as we noted in the Preliminary Scope Memorandum n1476 and as we detailed in Comment 2 above, if the petitioner identifies a particular product as covered by the scope during the course of the investigation, the Department will give substantial deference to the petitioner to determine whether a product-based exclusion is appropriate. It is the petitioner that is allegedly harmed by GOC subsidization and dumped Canadian exports, and therefore it is the petitioner whose concerns about circumvention should be considered and addressed.

n1476 Id. at Comment 4.

Accordingly, we take no heed of the GOC's assertion that the petitioner's concerns regarding circumvention are "unfounded," or that there exist methods for limiting circumvention concerns. As noted above, if the petitioner believes certain scope language is necessary to address potential circumvention, and we find that such language is otherwise administrable, the Department will generally defer to the petitioner's desired scope language.

Furthermore, even if the petitioner was required to state its reasons for refusing to exclude certain merchandise from these investigations, which it is not, it has satisfied that requirement in this case. For each of the products listed above, the petitioner has explained that the product is explicitly covered by the AD/CVD petitions, or that the exclusion of the product would allow circumvention of a potential order by allowing other products to be imported without the assessment of AD/CVD duties, notwithstanding the petitioner's intent to cover such merchandise in the petition.

The GOC argues that the petitioner claims that it is only being injured by dimensional lumber, but the petitioner has stated clearly on the record that it is being injured not only by dimensional lumber, but also by semi-finished lumber, and even finished lumber products that could be interchanged with semi-finished or raw dimensional lumber, such as fence pickets. n1477 The petitioner's basis for covering such merchandise is that there is little difference between these products and general lumber, as the products could be used in a myriad of applications. n1478 Thus, the GOC's argument that the products listed above are either outside the scope or should be excluded because they are not the products for which the petitioner seeks relief, is incorrect. These products do not fit the definition of finished products as applied to these investigations and are the very type of products for which the petitioner seeks relief.

n1477 See Petitioner Supp QNR 1 Response, at 1-6.

n1478 Id.

As noted throughout this case, due to the limited or complete lack of difference between dimensional lumber and many of the products that the GOC argues should be excluded, the petitioner's circumvention concerns are not unreasonable. Pallet components, truss components, stringers, fencing materials, and landscape ties are all covered by the definition of subject merchandise, as described in the scope of these investigations. Thus, allowing an exclusion for such products would appear to provide an opportunity for exporters of subject lumber to circumvent the order by allowing them to identify exports of lumber, regardless of actual intent, as pallet or truss components, or as other products for which the GOC requests an exclusion or a finding that the product is out of scope. The petitioner has cited, throughout this record, to instances of circumvention or administrability challenges posed by the products under discussion. For instance, the petitioner has cited to difficulties experienced by CBP in distinguishing truss components from general lumber, n1479 fenceposts from general lumber, n1480 and prefabricated home components from general lumber. n1481 Thus, the GOC's assertions that many of the products in question here, if excluded, would not raise circumvention concerns is not supported by the evidence on the record.

n1479 Id. at 1-2.

n1480 See Petitioner Rebuttal Comments - Scope at 10.

n1481 Id. at 18-19. While the GOC has not discussed prefabricated home kits here, it has elsewhere, and such kits are highly similar to the products under discussion here and the circumvention attempts identified by CBP are instructive.

Once the ITC and Department have agreed to initiate an investigation on a certain scope, it is uncommon for the petitioner to be compelled to justify why it has rejected demands that it change such a scope. However, here, the petitioner has further demonstrated that its refusals to change the current scope are justified because such products are either the very products from which it seeks relief, or products that present reasonable circumvention concerns. While the Department has the discretion to modify a proposed scope in certain circumstances, use of such discretion is inappropriate here, where the petitioner has raised legitimate concerns that changing a scope would create significant potential for circumvention. Accordingly, we find that fence pickets and fencing materials, truss kits, pallet kits, window and door frame components, flooring products, tongue and grooved products that are end-matched, tongue and grooved paneling, certain siding, notched stringers, pre-cut bridging, pre-finished products of a certain thickness, ripped and chopped softwood lumber items, and landscape ties are all subject to the scope of these investigations.

Comment 93: Craft Kits

In the Preliminary Scope Memorandum, in our analysis relating to finished goods, the Department determined that there was insufficient information on the record to determine the scope status of"craft kits." n1482 RILA asserts that the Department should explicitly add craft kits to the illustrative list of out-of-scope products. n1483

n1482 See Preliminary Scope Memorandum at Comment 6.

n1483 See Canfor Scope Brief at 2; Canadian Parties' Scope Brief at 6; RILA Scope Brief at 2; IKEA Scope Rebuttal at2.

The petitioner argues that the Department should not add "craft kits" to the illustrative list of out-of-scope products at this time. n1484

n1484 See Petitioner Scope Rebuttal at 22.

Department's Position: We agree with the petitioner, in part. RILA asserts that the Department's proposed language relating to finished goods was "not sufficiently comprehensive because it would not cover such items as craft kits and other do-it-yourself consumer items that are unassembled at the time of import," and asserts that the Department should explicitly add "craft kits" to the illustrative list of out-of-scope products. n1485 RILA argues that "craft kit" is not a vague term, and that the term is a "commonly accepted retail term." n1486 However, regardless of whether the term is well understood in a retail context, as with any scope determination, the Department must have a confident understanding of the product in question in order to determine that product's scope status. In our Preliminary Scope Memorandum, we explained that the record did not permit us to make a scope determination for products characterized as "craft kits." n1487 Accordingly, we agree with the petitioner that it is not appropriate to list "craft kits" among the goods identified as finished products.

n1485 See RILA Scope Brief at 6.

nl486 Id.

n1487 See Preliminary Scope Memorandum at Comment 6.

However, in its scope brief, RILA lists a number of products that, it asserts, fall within the broader category of"craft kits," including "wood bird feeders, toys, model houses, cars, boats and other vehicles." n1488 We agree that such products are finished goods - and are not softwood lumber covered by the scope of these investigations. Accordingly, we will include "wood bird feeders," "wood toys," and "model houses, cars, boats and other vehicles" in our list of products identified as out-of-scope finished goods that will be submitted to CBP following the final determination in these investigations.

n1488 Id.

Comment 94: Whether Certain Scope Language Should be Removed

The GOC argues that the Department should remove the following paragraph from the scope language:

Subject merchandise as described above might be identified on entry

documentation as stringers, square cut box-spring-frame components,

fence pickets, truss components, pallet components, flooring, and door

and window frame parts. Items so identified might be entered under the

following ten-digit HTSUS subheadings in Chapter 44: 4415.20.40.00;

4415.20.80.00; 4418.99.90.05; 4418.99.90.20; 4418.99.90.40;

4418.99.90.95; 4421.99.70.40; and 4421.99.97.80. n1489

n1489 The last two HTSUS numbers were inadvertently listed as 4421.91.70.40 and 4421.91.97.80 in the scope accompanying the preliminary determination in the AD investigation.

The GOC states that it is well-settled Department practice that the written scope description, rather than particular HTSUS codes, controls what merchandise is covered. Thus, it is the GOC's contention that the above language is not only unnecessary, but will cause confusion because the products described above are finished products that the Department, supported by the petitioner, has determined are not within the scope.

The petitioner notes that it included the language above in the scope because it will help prevent circumvention. Thus, the petitioner opposes its removal. The petitioner notes that to the extent parties may have "cause for concern" or confusion regarding the applicable HTSUS codes listed in the scope of these investigations, parties should rely on the written description of the scope.

Department's Position: We disagree with the GOC and have not removed the paragraph in question. The GOC claims that the paragraph only identifies items that are finished products. It does not. Each product mentioned in the above-referenced paragraph was explicitly determined in the Preliminary Scope Memorandum to be in-scope merchandise and, thus, found not to be a finished good for the purposes of these investigations: stringers in Comment 21; square cut box-spring-frame in Comment 34; fence pickets in Comment 11; truss components in Comment 12; pallet components in Comment 13; flooring in Comment 17; and door and window frame parts in Comment 16.

Some of the HTSUS categories in the paragraph in question contain both in-scope-merchandise (i.e stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts) and out-of-scope merchandise. We believe specifying in the scope which products are covered (stringers, square cut box-spring-frame components, fence pickets, truss components, pallet components, flooring, and door and window frame parts) and which products are not covered (finished products, which we have now defined in the scope) will, contrary to the claims made by the GOC, make it easier to identify which products covered by these HTSUS categories are inside and outside of the scope. Thus, we have continued to include this paragraph in the scope of these investigations.

Comment 95: Wood Shims

In our Preliminary Scope Memorandum, the Department determined that wood shims are within the scope of these investigations. n1490 JDIL asserts that wood shims are finished products, and are therefore outside of the scope. n1491 The petitioner asserts that the Department should not modify its analysis, and should continue to find such products to fall within the scope. n1492

n1490 See Preliminary Scope Memorandum at Comment 10.

n1491 See JDIL Scope Brief at 3.

n1492 See Petitioner Scope Rebuttal at 57-59.

Department's Position: We agree with the petitioner. JDIL asserts that wood shims are finished products. n1493 However, as we explained in the Preliminary Scope Memorandum, to constitute finished products for the purposes of these investigations, products must have "undergone sufficient processing such that they can no longer be considered intermediate products," and such products must be "readily differentiated from merchandise subject to these investigations at the time of importation." n1494 Wood shims do not meet the second criteria.

n1493 See JDIL Scope Brief at 3.

n1494 See Preliminary Scope Memorandum at Comment 6.

The scope covers "(c) oniferous wood, sawn, or chipped lengthwise, sliced or peeled, whether or not planed, whether or not sanded, or whether or not finger-jointed, of an actual thickness exceeding six millimeters." The products identified by JDIL are wood shims that are made from coniferous wood that, in part, exceed 6 millimeters in thickness. Although the wood shims described by JDIL are tapered to widths of less than 6 millimeters, the scope does not indicate that products are not covered by the scope if a portion of the product is less than 6 millimeters in thickness. n1495 Accordingly, we find that wood shims are covered by the scope because they cannot be readily differentiated from in-scope softwood lumber, and therefore do not constitute finished products as defined by the scope of these investigations.

n1495 The petitioner also expresses concern that JDIL's proposed interpretation regarding tapered woods products would create avenues for circumvention, i.e.,by allowing irregularly cut wood products to avoid duties. See Petitioner Scope Rebuttal at 58.

Comment 96: Pre-Painted Wood Products

In our Preliminary Scope Memorandum, the Department determined that pre-painted wood products are within the scope of these investigations. n1496

n1496 See Preliminary Scope Memorandum at Comment 7.

Woodtone and Maibec assert that pre-painted decorative wood products are finished products, and therefore should be determined to be out-of-scope. n1497 Woodtone and Maibec assert that pre-painted decorative wood products including "individual pieces used for siding" and "complete siding project kits" meet the Department's criteria for finished goods. n1498 In support of their position, Woodtone and Maibec assert that "pre-painted wood products go through extensive, costly and sufficient processing such that the merchandise can no longer be considered an intermediate product." n1499 Woodtone and Maibec explain that the production process:

1) uses specific species of wood that are particularly amenable to

coating, 2) involves remanufacturing of standard dimensional lumber into

non-standard dimensions without grade stamps for structural application,

and 3) results in a variety of surfaces, including smooth, brush faced

and combed, and a variety of profiles, including tongue and groove, and

beveling. Finally, the pre-painted/stained products need no further

processing before sale and use. Moreover, in Maibec's case the pre-

painted wood products are sold as dedicated kits for use in a specific

application (siding) at a specific site, and thus cannot be sold to the

general market and are of limited value if returned unused by the

customer. n1500

n1497 See Woodone/Maibec Scope Brief at 2.

n1498 Id.

n1499 Id. at 3.

n1500 See Woodtone/Maibec Scope Brief at 3-4.

Woodtone and Maibec emphasize that these factors demonstrate that the products are highly processed and are not properly considered intermediate goods.1501 As a result, they assert, the merchandise must instead be considered finished products.

n1501 Id. at 4.

The petitioner asserts that such products fall within the scope of these investigations. n1502

n1502 See Petitioner Scope Rebuttal at 54-57.

Department's Position: The Department disagrees with Woodtone and Maibec. We continue to find that "pre-painted decorative wood products" are within the scope of these investigations.

We disagree with Woodtone and Maibec's assertion that pre-painted wood products, as described by the parties, constitute finished goods. n1503 As the Department discussed in its treatment of finished goods, for the purpose of this scope, we have defined finished goods as products that are not properly considered intermediate goods, and goods which "can be readily differentiated from merchandise subject to these investigations at the time of importation." n1504 The merchandise described by Woodtone and Maibec, however, cannot be readily differentiated from in-scope merchandise. The parties describe their products as "individual pieces used for siding," "individual siding and trim components" and "complete siding project kits." n1505 Siding, however, is explicitly covered by the scope of these investigations, which covers "(c)oniferous wood siding, flooring, and other coniferous wood (other than moldings and dowel rods), including strips and friezes for parquet flooring, that is continuously shaped (including, but not limited to, tongued, grooved, rebated, chamfered, V-jointed, beaded, molded, rounded) along any of its edges, ends, or faces, whether or not planed, whether or not sanded, or whether or not end-jointed." The other characteristics of Woodtone's and Maibec's merchandise (e.grelating to price, finishing, etc.) do not render the merchandise out-of-scope for the reasons discussed throughout the Preliminary Scope Memorandum. n1506

n1503 Id. at 4.

n1504 See Preliminary Scope Memorandum at Comment 6.

n1505 See Woodtone/Maibec Scope Brief at2,5.

n1506 Woodtone and Maibec assert that there is limited potential for circumvention if pre-painted wood products are determined to be out-of-scope, because these products require a high degree of processing, and cannot be used in structural applications. However, given that the Department finds these products to be in scope, this argument is moot. See Woodtone/Maibec Scope Brief at 5.

Finally, to the extent that Woodtone and Maibec seek to have their merchandise excluded from the scope, the petitioner has stated that the companies' description of their merchandise is insufficiently detailed to permit an exclusion, and therefore it does not agree to an exclusion. n1507 As noted above, the Department generally defers to the petitioner with respect to matters involving intended scope coverage, and in this case there are no administrability or evasion concerns that warrant an exclusion of the merchandise in question. For these reasons, we continue to find that pre-painted decorative wood products are within the scope of these investigations.

n1507 See Petitioner Scope Rebuttal at 57.

Comment97: I-Joists

In the Preliminary Scope Memorandum, the Department determined that I-joists constitute finished products, and are therefore outside the scope of these investigations. n1508

n1508 See Preliminary Scope Memorandum at 16-17.

Central Canada and Canfor assert that the Department should continue to find that I-Joists are finished products outside the scope of these investigations. Moreover, Central Canada and Canfor assert that the Department should include a specific definition of I-joists in the scope. n1509 Specifically, Central Canada and Canfor assert that the Department should include the following language in the scope to define the parameters of the term I-joist:

n1509 See Canfor Scope Brief at 2; Central Canada Scope Issues Brief at 12.

Fully assembled I-Joists, also known as I-Beams or I-Joist Beams, meeting

the following description: I-shaped structural members made by gluing

together an oriented strand board sheet, as their center web, with

grooved flanges made from 1650f-1.5E to 2400f-2.0E machine stress rated

(MSR) lumber, finger-jointed or not, or from laminated veneer lumber

(LVL) or other non-lumber products, in lengths up to 64 feet. Effective

as of January 1, 2017, they are classified under HTSUS subheading

4418.99.90.40.

The petitioner agrees that I-joists are outside the scope of these investigations, but does not agree that it is appropriate to include a definition of I-joists in the scope. n1510

n1510 See Petitioner Scope Rebuttal atl7-18.

Department's Position: The Department agrees with the petitioner. We continue to find that I-joists, for the reasons articulated in the Preliminary Scope Memorandum, n1511 are outside of the scope of these investigations and are accordingly not subject merchandise. We also agree with the petitioner, Central Canada and Canfor that the particular I-joist products n1512 described by Central Canada and Canfor, are included in the larger group of all I-joists that are out-of-scope merchandise. n1513

n1511 See Preliminary Scope Memorandum at Comment 6. We note that SCBA commented on the AD Preliminary Determination with respect to I-joists. See SCBA Comments at 1-4. Because SCBA's comments do not address the Department's discussion regarding the status of I-joists as finished products, we do not further consider them here.

n1512 See Canfor Scope Brief at 2; Central Canada Scope Brief at 12.

n1513 The petitioner also agrees that the particular product described by Central Canada and Canfor is outside the scope of these investigations. See Petitioner Scope Rebuttal at 17-18.

However, we disagree that the text of the scope should be amended further to identify these particular I-joist products, because including such language in the text of the scope is not necessary or appropriate. As an initial matter, to the extent possible, the Department attempts to avoid using HTSUS classifications in defining the parameters of a scope. n1514 Additionally, in the revised scope, the Department has explained that I-joists - as a class of products - are not subject merchandise. n1515 Identifying one particular type of I-joist in the language of the scope, such as the product identified by Central Canada and Canfor, would serve to create confusion and ambiguity regarding the scope status of other I-joists that are slightly different from the I-joist specification described above. The Department must take into consideration whether a modification could create additional complications in administering the finalized scope when defining the scope of an investigation. n1516 We determine the modification proposed by Central Canada and Canfor would do so.

n1514 See Nails from Oman IDM at 3.

n1515 Specifically, we state that: "The following products are illustrative of the type of merchandise that is considered "finished,' for the purpose of this scope: I-joists; assembled pallets; cutting boards; assembled picture frames; garage doors."

n1516 See, e.g., Steel Wheels from the PRC AD IDM at Comment 1.

The Department continues to find that the described I-joists are not within the scope of these investigations. However, we will not include the additional language suggested by Central Canada and Canfor, which describes a particular type of I-joist, in the scope of these investigations.

Comment 98: Miscellaneous Products Discussed by the GBC and the BCLTC

In our Preliminary Scope Memorandum, we stated that high-value products, Western Red Cedar, and lumber from private lands, including First Nation Treaty Settlement Lands, are covered by the scope of these investigations. n1517 The GBC and the BCLTC assert that the above-referenced products should be excluded from the scope of these investigations. n1518

n1517 See Preliminary Scope Memorandum at Comment 27, 30, and 32.

n1518 See GOC Etal Common Issues Case Brief at 103-105.

Department's Position: We disagree with the GBC and the BCLTC. In our Preliminary Scope Memorandum, we addressed the parties' extensive arguments regarding high-value products, Western Red Cedar, and lumber from private lands, including First Nation Treaty Settlement Lands, and determined that each of these products is covered by the scope of these proceedings. n1519 The GBC and the BCLTC have provided a cursory discussion of each product and have raised no new arguments. Accordingly, for the reasons stated in our Preliminary Scope Memorandum, we continue to find that these products are covered by the scope of these investigations.

n1519 See Preliminary Scope Memorandum at Comment 27, 30, and 32.

Comment 99: Bed-Frame Components/Crating Ladder Components

In the Preliminary Determination, the Department adopted exclusions for bed-frame kits and for particular bed-frame components, and noted that it would consider expanded exclusionary language covering bed-frame components and an exclusion covering crating ladder components, if submitted by interested parties. Barrette Wood, EACOM, and Central Canada n1520 have submitted revised exclusionary language relating to bed-frame components:

n1520 See Barrette Wood and EACOM Scope Brief at 3-4; Central Canada Scope Brief at 14-15.

Box-spring frame components, also known as bed-frame components, meeting

all of the following conditions, regardless whether packaged or shipped

together or separately: (1) Sold as complete sets with all the necessary

wooden components to assemble a certain number of boxspring frames with

no further processing required; (2) The end rails must be radius-cut at

both ends and must be substantial cuts so as to completely round one

corner; (3) None of the components exceeds 1" in actual thickness or 84"

in length; and (4) at least 25 percent by volume (MBF) of each entry must

consist of radius-cut components.

Parties have submitted an analogous request for an exclusion for crating ladder components.

One domestic producer of bed frames, UFP, submitted rebuttal comments arguing that the proposed language covering bed-frame components "regardless whether packaged or shipped together or separately" would not be administrable and would be unenforceable. n1521 Furthermore, the petitioner also concluded in its rebuttal brief that "the Department should not grant the requests of Central Canada and Barrette and EACOM to exclude bed or box spring frame components, or crating ladder components, from the scope of these investigations," on the same basis - that there would be too great a risk of circumvention and concerns with respect to the "administrability of the exclusion by the Department and Customs." n1522

n1521 See UFP's Scope Rebuttal at 6.

n1522 See Petitioner's Rebuttal Scope Brief, at 34-37.

Department's Position: The Department will not adopt the proposed exclusions. The Department held consultations with CBP, n1523 and CBP advised that the proposed exclusion was not administrable and subject to a large risk of circumvention. CBP highlighted administration problems relating to assessing whether merchandise qualifies for an exclusion when portions of such merchandise enters in separate shipments and customs entries. Further, with respect to the exclusion for bed-frame components, assessing the volume of merchandise meeting the "radius-cut" requirement would be impractical for field agents. Finally, CBP raised concerns regarding potential circumvention. CBP's concerns regarding this language are consistent with the Department's concerns, as expressed earlier in this proceeding, as well as those reflected by UFP and the petitioner in their rebuttal briefs.

n1523 See Proposed Exclusion Language Call Memo.

Throughout this investigation, the Department has held numerous meeting and phone calls with interested parties in an effort to achieve a workable and commercially viable exclusion for bed-frame components and crating ladder components. Additionally, the Department has adopted less expansive exclusions covering bed-frame components, where possible. n1524 Ultimately, as explained above in Comment 2, it is the Department's obligation to ensure that the scope of these investigations is administrable for CBP and the Department, and that any resulting order is not ripe for circumvention. Given these concerns, we are not able to adopt the parties' proposed exclusionary language.

n1524 See Preliminary Scope Memorandum at 49-50.

Comment 100: U.S.-Origin Lumber Sent to Canada For Further Processing

In the Preliminary Scope Memorandum, the Department adopted language jointly submitted by the petitioner and the GOC to exclude from the scope of these investigations U.S.-origin lumber that has undergone three types of processing in Canada: (1) kiln drying; (2) planing to create smooth-to-size board; or (3) sanding. n1525 In adopting that exclusion, we declined to adopt a broader version of the exclusion as proposed by two interested parties. However, we explained: "should interested parties, including the petitioner, agree to expand the scope of this exclusion in the manner described by CIFQ and Matra, the Department would consider modifying the exclusionary language for the final determinations to reflect the agreed upon language provided the Department has sufficient time to do so." n1526

n1525 Id. at Comment 1.

n1526 Id.

Central Canada, NAFP and Woodtone assert that the Department should expand the parameters of the exclusion. n1527 Central Canada asserts that neither the Department nor any of the other parties has provided a reason as to why the exclusion should not be expanded to include lumber that is sent to Canada for profiling along any of its edges, ends or faces, or finger jointing. NAFP asserts that trimming, ripping/edging, re-sawing, and notching do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin lumber in a degree that is substantially different from sanding, planning or kiln drying, i.e., the agreed upon processing steps that meet the subject exclusion. Similarly, Woodtone requests that texturing/resawing, profiling, and pre-painting/staining do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin lumber in a degree that is substantially different from sanding, planning or kiln drying.

n1527 See Central Canada Scope Brief at 2-3; NAFP Scope Brief at 2-3; Woodtone Scope Brief at 2-3; Central Canada Scope Rebuttal at 2-3.

The petitioner opposes any expansion of the exclusion. n1528

n1528 See Petitioner Scope Rebuttal at 39-40.

Department's Position: The Department disagrees with Central Canada, NAFP and Woodtone. In the Preliminary Scope Memorandum, in adopting an exclusion for U.S.-origin lumber sent to Canada for further processing, we declined to adopt a broader version of the exclusion as proposed by two interested parties; however, we explained: "should interested parties, including the petitioner, agree to expand the scope of this exclusion in the manner described by CIFQ and Matra, the Department would consider modifying the exclusionary language for the final determinations to reflect the agreed upon language provided the Department has sufficient time to do so." n1529 The petitioner has not agreed to any modification to the above-referenced exclusion.

n1529 See Preliminary Scope Memorandum at 9.

Central Canada asserts that neither the Department nor any of the other parties has provided a reason as to why the exclusion should not be expanded to include lumber that is sent to Canada for profiling along any of its edges, ends or faces, or finger jointing. n1530 Central Canada's argument on this point, however, is inapposite - the petitioner has explicitly opposed this request. n1531 It is the Department's practice "to provide ample deference to the petitioner with respect to the definition of the product(s) for which it seeks relief during the investigation phase of an AD or CVD proceeding." n1532 In light of the lack of consent from the petitioner, the Department will not agree to the proposed expanded exclusion.

n1530 See Central Canada Scope Brief at 2.

n1531 See Petitioner Scope Rebuttal at 39-40.

n1532 See Washers from Mexico IDM at 7; see also Preliminary Scope Memorandum at 6 (citing Narrow Woven Ribbons from the PRC, [*75 FR 7244, 7247,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4YDS-8370-006W-836P-00000-00&context=) unchanged in Narrow Woven Ribbons from Taiwan).

NAFP requests that trimming, ripping/edging, re-sawing, and notching be added to the list of processing steps that lumber may undergo while still meeting the requirements of this exclusion. n1533 Woodtone requests that texturing/resawing, profiling, and pre-painting/staining similarly be added to the list of processing steps permitted under this exclusion. n1534 NAFP provides several explanations for why the Department should modify the above-referenced exclusion. NAFP asserts that trimming, ripping/edging, re-sawing, and notching do not alter the U.S.-origin status of the lumber, and do not change the name, use or character of the U.S.-origin lumber in a degree that is substantially different from sanding, planning or kiln drying, i.e., the agreed upon processing steps that meet the subject exclusion. n1535 NAFP also asserts that such processing would not change the tariff heading or country of origin for NAFTA purposes. n1536 Finally, NAFP argues that adoption of its proposed expanded exclusion would allow remanufacturers to purchase lumber from U.S. sawmills without undermining the remedial nature of any potential AD and CVD orders. n1537 Woodtone presents an analogous set of arguments in support of its position that texturing/resawing, profiling, and pre-painting/staining should be added to the list of processing steps permitted under this exclusion. n1538

n1533 See NAFP Scope Brief at 3.

n1534 See Woodtone Scope Brief at 3.

n1535 See NAFP Scope Brief at 3.

n1536 Id.

n1537 Id.

n1538 See Woodtone Scope Brief at 3-4.

Despite the arguments provided by NAFP and Woodtone, the petitioner has not agreed to a revised exclusion. The petitioner states that it took into consideration the "types of processes" that would be "minor and sufficient to ensure that Customs could readily discern whether" lumber is of U.S. Origin. n1539 The petitioner explains that outside of the three processing for which it has agreed to an exclusion, the additional processes proposed by NAFP and Woodtone do not meet its criteria. The petitioner states, for example, that notched lumber is covered by the plain language of the scope and cannot be considered a minor process, and asserts that "staining, pre-painting, ripping, and the other processes described by NAFP and Woodtone would prevent Customs from readily discerning whether the lumber is of U.S. origin." n1540

n1539 See Petitioner Scope Rebuttal Brief at 40.

n1540 Id.

As we explained in the Preliminary Scope Memorandum, and above, the Department gives substantial deference to the petitioner in fashioning the scope of a petition and the subsequent investigations. n1541 The Department's practice "is to allow petitioner to define the scope because petitioners have close knowledge of the products for which they seek relief' n1542 and the Department will accept the scope as written without "an overarching reason to modify the scope in the petition." n1543 The petitioner has explained that it does not believe an exclusion is appropriate for U.S.-origin lumber which is further processed beyond the kiln drying, planing, or sanding processes described above, and we do not believe that there are administration-related or evasion-related concerns which would otherwise justify a broadening of the product exclusion. Accordingly, the Department will not modify the scope of the investigations to include an exclusion for U.S. origin lumber which is processed in Canada using the processes identified by Central Canada, NAFP and Woodtone.

n1541 See Washers from Mexico IDM at Comment 7; see also Preliminary Scope Memorandum at 6.

n1542 Notice of Final Determination of Sales at Less Than Fair Value: Outboard Engines from Japan IDM at Comment 2.

n1543 See Preliminary Scope Memorandum at 7 (citing Circular Welded Austenitic Stainless Pressure Pipe from the PRC Prelim, [*73 FR 51788, 51789,*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4TCH-09X0-006W-831B-00000-00&context=) unchanged in Circular Welded Austenitic Stainless Pressure Pipe from the PRC Final).

Comment 101: Softwood Lumber Produced in Canada from U.S.-Origin Logs

In the Preliminary Scope Memorandum, the Department declined to adopt an exclusion covering lumber produced in Canada from U.S.-origin logs. n1544 Central Canada asserts that the Department should exclude from the scope of these investigations any lumber produced in Canada from U.S. Logs. n1545 Specifically, Central Canada asserts that U.S. logs are not the merchandise of concern to the petitioner because those logs did not benefit from alleged stumpage subsidies in Canada. Because the logs did not benefit from stumpage, Central Canada argues that the softwood lumber produced from those logs should not be considered subject to the scope of these investigations. Further they claim that not granting an exclusion would cause serious injury to the U.S. timber industry and that the exclusion would be readily enforceable. The petitioner opposes this exclusion, asserting that the exclusion relates to products that are covered by the plain language of the scope, and there is no question that those products are softwood lumber made in Canada. Further, the petitioner asserts that the issue of whether U.S.-origin logs benefitted from countervailable subsidies or are sold at fair market prices is immaterial to the Department's scope analysis, as the potential injury to this industry does not relate to the language of the scope, which expressly covers the product at issue. n1546

n1544 See Preliminary Scope Memorandum at Comment 31.

n1545 See Central Canada Scope Brief at3-11.

n1546 See Petitioner Scope Rebuttal at 37-39.

Department's Position: The Department disagrees with Central Canada. As an initial matter, we note that lumber produced from U.S-origin logs clearly constitutes Canadian softwood lumber. Such logs enter Canada as non-subject merchandise, and are processed into subject merchandise in Canada. No party argues otherwise. Accordingly, the request from Central Canada is that we treat certain types of Canadian softwood lumber in a different manner than other types of Canadian softwood lumber solely because of the log's place of harvesting.

As we have explained, in determining the scope of an AD or CVD investigation, the Department gives substantial deference to the intent of the party allegedly being injured by dumping and subsidization - the petitioner. In this case, the petitioner has explicitly, and consistently, opposed an exclusion for lumber made in Canada from logs harvested in the United States. n1547

n1547 Id.

Central Canada asserts that despite the petitioner's opposition, the Department should nonetheless grant an exclusion for lumber made in Canada from U.S.-origin logs, because the thrust of the petitioner's CVD allegations is that Canadian provincial governments provide stumpage subsidies to Canadian softwood lumber manufacturers, and therefore Canadian lumber manufactured from U.S. logs cannot have benefited from those specific alleged subsidies. n1548

n1548 See Central Canada Scope Brief at3-11.

We disagree that this argument justifies an exclusion from the scope of the investigations. First, this scope applies equally to both the investigation addressing subsidization of Canadian softwood lumber products, as well as the investigation addressing Canadian sales at less-than-fair-value of softwood lumber. With respect to the less-than-fair-value investigation, the existence or non-existence of stumpage programs covering U.S.-origin logs is of no import.

Furthermore, with respect to the CVD investigation, the Department is investigating several Canadian subsidy programs which have an alleged effect on the production of subject merchandise, and the investigation does not relate solely to stumpage.

Additionally, Central Canada asserts that failure to exclude Canadian lumber manufactured from U.S. logs from the scope of these investigations will cause serious injury to the U.S. timber industry. Furthermore, Central Canada asserts that an exclusion covering Canadian lumber made from U.S.-origin logs would be limited and readily enforced. n1549

n1549 Id.

These arguments made by Central Canada are essentially the same arguments as those which were considered, and rejected, in the Preliminary Scope Memorandum. n1550 At issue in these investigations is the alleged injury to the COALITION caused by dumped or subsidized imports of Canadian softwood lumber. That is the industry which we must consider in assessing the scope of the investigations.

n1550 See Preliminary Scope Memorandum at Comment 31.

Furthermore, as explained above, in the vast majority of cases, the Department will defer to the petitioner's proposed language, and will only consider modifying that language when the proposed scope language raises certain concerns with the Department and CBP. As that is not the situation in this case, we agree with the petitioner that softwood lumber produced from logs harvested in the United States should not be excluded from the scope of these investigations.

For these reasons, we are not granting an exclusion for lumber made in Canada from U.S.-origin logs.

Comment 102: Remanufactured Goods

In our Preliminary Scope Memorandum, we determined that the scope of these proceedings covers remanufactured products. n1551 The GOC asserts that remanufactured products constitute a different class or kind of merchandise from the dimensional lumber that is the focus of these investigations, and that the Department should separate the merchandise identified in the petition into two or more separate classes or kinds of merchandise. n1552 The petitioner responds that the Department should continue to find that the merchandise covered by the scope of these investigations constitutes a single class or kind of merchandise. n1553

n1551 Id. at Comment 9.

n1552 See GOC Etal Common Issues Case Brief, at 103-107.

n1553 See Petitioner Scope Rebuttal at 3-8.

Department's Position: We agree with the GOC that the Department has the authority to determine if a product, although covered by the proposed scope in a petition, is a different class or kind of merchandise from other products covered by the proposed scope. n1554 However, in this case, we disagree with the GOC's assertion that the general category of"remanufactured goods" is a different class or kind of merchandise from all other merchandise covered by the scope of the investigations.

n1554 See [*Torrington, 745 F. Supp. at 728.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1V30-003R-S05M-00000-00&context=)

As we stated in our Preliminary Scope Memorandum, these investigations cover lumber products beyond dimensional lumber, and the petitioner explicitly included products that have undergone various levels of remanufacturing within the scope. n1555 Furthermore, numerous responses on the record of these proceedings clearly indicate that the scope covers lumber products beyond structural lumber. n1556

n1555 See Preliminary Scope Memorandum at Comment 9; see also Petitioner Supp QNR 1; Petitioner Rebuttal Comments - Scope.

n1556 See Petitioner Supp QNR 1; Petitioner Rebuttal Comments - Scope.

The GOC summarily asserts that applying the Diversified Products criteria demonstrates that "dimensional lumber and the remanufactured products included in the scope of this investigation have different uses, different physical characteristics, different purchaser expectations, different channels of trade, and different manners in which the product is advertised and displayed." n1557 However, it is telling that the GOC has provided little argument and no facts on the record to permit the Department to conduct such an analysis with regard to remanufactured products on a product-by-product basis, or even at a more general level. Accordingly, as in our Preliminary Scope Memorandum, we cannot apply the Department's Diversified Products analysis to the general term "remanufactured products."

n1557 See GOC Etal Common Issues Case Brief, at 103-107.

We do note that, for certain remanufactured products, particular interested parties did provide scope arguments with sufficient facts to permit such an analysis, as explained above. In these instances, the Department addressed those arguments in the context of product-specific scope requests.

Comment 103: Eastern White Pine

In Lumber IV., the Department based its determination concerning the scope status of Eastern White Pine (EWP) on a careful and thorough evaluation of the entire case record concerning the Diversified Products criteria. n1558 As part of this proceeding, the ITC considered comparable criteria and reached the same conclusion, i.e., that EWP cannot be distinguished as a separate class or kind of softwood lumber distinct from the merchandise covered by these investigations. n1559 In the Preliminary Scope Memorandum we analyzed record evidence concerning EWP based on the Diversified Products criteria finding, consistent with Lumber IV and the ITC preliminary determination, that EWP is the same class and kind of merchandise as the softwood lumber covered by the scope of these investigations. n1560

n1558 On March 12, 2002, as part of the Lumber IV investigation, the Department issued a memorandum preliminarily determining that certain lumber products for which a class or kind determination had been requested did not constitute a separate class or kind. See Memorandum, "Class or Kind Determinations and Consideration of Certain Scope Exclusion Requests," dated March 12, 2002 (Lumber IV Preliminary Scope Memorandum, included in the Preliminary Scope Memorandum as Attachment III. This determination was unchanged in Lumber IV Final AD Determination. Notably, in the litigation which followed before a NAFTA Panel, the Department's class or kind determination with respect to EWP was upheld by the Panel as lawful. See In the Matter of Certain Softwood Lumber Products from Canada: Final Affirmative Antidumping Determination, Sec. No. USA-CDA-2002-1904-02 (July 17, 2003) at 161-162 (holding that the Department's "determination not to treat EWP as a separate "class or kind' of merchandise is supported by substantial evidence on the record, and is not contrary to law").

n1559 See ITC Preliminary Determination at 8-12.

n1560 See Preliminary Scope Memorandum at Comment 27.

Central Canada argues that EWP, while botanically a softwood, commercially is a hardwood and maintains that EWP is distinct from softwood lumber in every respect, and consequently is a separate class or kind of merchandise. Central Canada presented arguments addressing each of the five Diversified Products criteria. n1561

n1561 The criteria from [*Diversified Products, 572 F. Supp. 883, 889*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3B20-003R-S1H1-00000-00&context=) as set forth in 19 CFR 351.225(k)(2).

In arguing that EWP has distinct physical characteristics from the lumber under investigation, Central Canada argues that EWP cannot bear loads and is not used structurally. Rather, Central Canada argues it is a discrete species of an appearance grade lumber that is presented and dressed in a unique way, is weaker and softer than the subject merchandise lumber, is permeable, and is cut to unique and distinct sizes. Central Canada claims that EWP is valued primarily for its overall attractive appearance, and that producers use manufacturing methods designed to maximize the quality and appearance of the wood when displaying it, similar to hardwood producers. Central Canada contends that the focus of these investigations is construction grade, framing lumber, which EWP is not. Central Canada claims that the Department misconstrued the ITC's statement that it is interchangeable with other types of softwood lumber. Central Canada claims that the ITC was referring to how EWP could be interchanged with other types of hardwood.

As it stated in comments submitted prior to the preliminary determination, Central Canada asserts that EWP is prized for its dimensional stability and aesthetic appeal, but does not have the strength required for construction uses. EWP has its own grading system based on the product's appearance, distinguishing it from other types of softwood lumber. Purchasers can expect from EWP a uniquely aesthetic, workable, appearance-grade wood fiber and expect it to be offered in unique and distinct sizes. Central Canada states that customers expect to pay 50 or even 100 percent more for EWP than typical softwood lumber. Central Canada claims that EWP is often cut to secondary manufacturers specifications and is produced in mills typically dedicated to EWP production. Further, Central Canada claims that the 15-year-old data from Lumber IV that the Department relied on in its preliminary decision is out of date, and therefore provides an insufficient basis to support the Department's finding that softwood lumber products sell at prices similar to EWP.

Concerning end use, Central Canada states that due to its appearance, workability, moisture content and dimension, EWP is distinctly suitable for end uses such as furniture applications, exterior siding, interior paneling, and crafts. These same characteristics, and its high price, it argues, render it unsuitable for uses such as general construction. Central Canada notes that while the Department claims that EWP could be used in construction, the Department failed to provide any examples of such use. Central Canada claims the Department did not rebut the proof it presented regarding the differing expectations regarding the size and price of EWP.

With respect to channels of trade, Central Canada contends, as it did in pre-preliminary determination comments, that EWP is sold primarily to furniture, window and other specialty product manufacturers that make use of its appearance and high dimensional stability, whereas softwood lumber is delivered to distribution centers for subsequent delivery to home builders or retailers. EWP, it claims, is sold predominantly in the eastern United States while the Western Pines are sold in the West. In addition, Western Pine, it claims, is usually transported by rail, whereas EWP is moved almost exclusively by truck. Central Canada notes that the Department has placed nothing on the record to contradict its statements regarding distribution channels.

Central Canada asserts that the following statements made in pre-preliminary determination comments were not disputed by the Department: The lumber industries market EWP in a different manner than softwood lumber by giving EWP its own grading system. EWP grading rules are developed for appearance. By contrast, the rules for dimension lumber are based on structural uses. The differences in grading rules reflect the wide recognition that EWP's end uses are directly related to its appearance, rather than strength and resistance to impact. In these and many other respects, EWP is more like hardwoods than softwoods. Also, Central Canada argues that EWP producers present more creative marketing in support of their products that do Western Pine producers. Central Canada also notes that EWP is shipped in different lengths and sizes because it is often cut to precise specifications. Further, due to the importance of appearance, EWP is individually packed and shipped by truck, while Western Pine is typically transported by rail.

The petitioner responds that, because all species of softwood lumber are covered by the plain language of the scope, EWP, a species of softwood lumber, is covered by the plain language of the scope. Further, the petitioner points out that this interpretation of the scope is consistent with the Department's conclusions in Lumber IV.

With respect to the Department's scope ***regulations***, the petitioner points out that the ***regulation*** which contains the Diversified Products factors, 19 C.F.R. 351.225, specifies in subsection (a) that "the Department issues "scope rulings' [under section 225] that clarify the scope of an order or suspended investigation with respect to particular products," only after an investigation is completed. Therefore, petitioner argues the Department is not required by law to apply the Diversified Products criteria in this investigation because the scope of an order or suspension agreement has not yet been issued.

In any case, the petitioner emphasizes that 19 CFR 351.225(k)(2) of the Department's ***regulations*** states that the Department resorts to a Diversified Products analysis only when the 19 C.F.R. 351.225(k)(l) factors - descriptions of the merchandise contained in (1) the petition, (2) the initial investigation, and (3) the determinations of the Department (including prior scope determinations) and the Commission - "are not dispositive." Thus, even if the ***regulation*** did apply, the petitioner argues that Central Canada's reliance on the Diversified Products criteria is misplaced because, in fact, the (k)(l) factors are dispositive on this issue.

However, should the Department address the Diversified Products criteria, with regard to physical characteristics, the petitioner argues that EWP shares general physical characteristics with other species of softwood lumber. The petitioner also contends that despite Central

Canada's comments to the contrary, the Department did not misconstrue the ITC's findings, as the ITC expressly stated in its preliminary determination that "[Central Canada] acknowledged that EWP is interchangeable with other appearance-grade woods rather than with species used for framing." n1562 With regard to the ultimate purchasers of EWP, the petitioner cites to the Department's finding in Lumber IV that customer expectations for all appearance-grade lumber are quite similar as they are all based on the appearance of the lumber itself. n1563 The petitioner cites to Central Canada's statement that EWP is marketed and displayed separately from dimensional lumber and notes that such a characteristic is not unique among appearance-grade lumber, as the Department found that Western Red Cedar and Eastern White Cedar are also marketed differently than dimensional lumber. n1564 With regard to end-use, the petitioner highlights the Department's citation to the ITC's preliminary report and the United States Department of Agriculture (USDA) Forest Service Wood Handbook, which state that EWP is used in wide range of uses, including as structural lumber, and notes that softwood lumber products such as sugar pine, ponderosa pine, Idaho pine, and spruce are interchangeable with white pine in the same applications. n1565 Finally, with respect to advertising, the petitioner states that EWP is marketed and sold in a similar manner to other types of appearance grade softwood lumber.

n1562 See ITC Preliminary Determination at 14.

n1563 See Lumber IV Final AD Determination IDM at Comment 52.

n1564 Id.

n1565 See Preliminary Scope Memorandum at Comment 27.

Department's Position: The plain language of the proposed scope covers all species of softwood lumber and no party, including Central Canada, has contended that EWP is not a species of softwood lumber. While the petitioner has argued that, because EWP is covered by the plain language of the proposed scope, there is no need to rely on an analysis under the Diversified Products criteria, we disagree. Regardless of whether a product is covered by a proposed scope during an investigation, pursuant to section 731 of the Act, AD and CVD orders cover only one class or kind of merchandise. Thus, if EWP were found to be a different class or kind of merchandise from all other in-scope merchandise during this investigation, the Department would have to determine if a separate AD and CVD order is appropriate to solely cover EWP. As noted above, the Department has the authority to determine if a product, although covered by the proposed scope of an investigation, is a different class or kind of merchandise from the other products covered by the proposed scope. n1566

n1566 See [*Torrington, 745 F. Supp. at 728.*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1V30-003R-S05M-00000-00&context=)

Accordingly, for these reasons, as it did in Lumber IV n1567 and as the ITC did in its preliminary determination, n1568 the Department conducted an analysis under the Diversified Products criteria in the preliminary determination. The results of all three analyses is that EWP is of the same class or kind of merchandise as the other products covered by the scope of these investigations. Central Canada has not offered arguments beyond those already addressed in the preliminary determination. n1569 Thus, we are not going to repeat our analysis regarding the application of each of the five diversified criteria to EWP, which we addressed extensively in the Preliminary Scope Memorandum. n1570

n1567 See Lumber IF Preliminary Scope Memorandum.

n1568 See ITC Preliminary Determination at 8-12.

n1569 See Preliminary Scope Memorandum at Comment 27.

n1570 Id.

We do emphasize, however, that despite Central Canada's claims to the contrary, the ITC noted that EWP is interchangeable with other appearance grade woods. In fact, the ITC explained that "the record demonstrates that softwood lumber products such as sugar pine, ponderosa pine, Idaho pine, and spruce are interchangeable with white pine in the same applications." n1571 This conclusion is significant, because the ITC determined that the record demonstrated that EWP was interchangeable with other types of softwood, and not hardwood, lumber. This conclusion was made despite the fact that Central Canada continually argues that EWP is more akin to a hardwood. We note that following this statement, the ITC preliminary determination then proceeded to state that "EWP is interchangeable with other appearance-grade woods" n1572 and that "EWP is not the only species of softwood lumber for which the grading system is not based on strength." n1573 Central Canada's claims notwithstanding, as shown from the ITC's statements excerpted above, the Department did not misconstrue the ITC's conclusions.

n1571 See ITC Preliminary Determination at 10.

n1572 Id.

n1573 Id.

As was the case in its pre-preliminary determination, Central Canada contends that the focus of these investigations is softwood lumber used for structural purposes. Central Canada argues that EWP is not used for structural purposes and thus it constitutes a different class or kind of merchandise from softwood lumber used for structural purposes. However, the USDA Forest Service Handbook notes that a large proportion ofEWP, mostly second-growth knotty wood or lower grades, is used for structural lumber. n1574 While Central Canada contends that EWP is too expensive to be considered for use in structural lumber, this argument does not appear to address the USDA's statement that customers buy lower grade EWP for structural uses. The Department also explained in Lumber IVthat information on the record indicated that EWP had been, and was being, used in construction. Therefore, we agreed with, and cited to, a finding in Lumber IV that "differences in structural strength are not so great (between EWP and other lumber) to be deemed unique when compared to other softwoods." n1575

n1574 See Memorandum, "Certain Softwood Lumber Products from Canada: Scope Exclusion Requests Received from Oregon-USDA Forest Service Wood Handbook - Wood as an Engineering Material," dated February 10, 2017, (USDA Forest Service Handbook) at 2-13.

n1575 See Lumber IF Preliminary Scope Memorandum at 28.

Leaving aside for the moment the question of whether EWP can be used in structural lumber applications, the scope of these investigations is softwood lumber, which covers a wide range of products, many of which have applications aside from structural applications and many of which have applications that include both structural and non-structural applications. If the Department were to categorize each species of softwood lumber into groups that had the same applications and average prices, as argued for by Central Canada, the result would likely be a determination that there are as many class or kinds of merchandise as there are softwood lumber species. Such an application of the Diversified Products criteria is unreasonable and there is no legal requirement for the Department to categorize scopes into arbitrarily narrow classes or kinds of merchandise in this manner.

Central Canada states that EWP is not typically produced at the same mills as other types of softwood lumber. To the extent that EWP is produced at mills dedicated to producing only EWP, and it is not clear that such mills exist, this is hardly unique to EWP. Can for reported making fencing and boards at its Wynn Wood sawmill. n1576 Tolko has mills dedicated to producing only Western Red Cedar products, another mill whose only production of in-scope-merchandise is dunnage, pallets, lathe strips and economy stud lumber. n1577 Similarly, West Fraser maintains mills dedicated to a small number of particular products. n1578

n1576 See Cantor's February 28, 2017, Section A Response (Cantor AQR), at A-38.

n1577 See Tolko Comments QNR Clarification Request 3,at 3-5.

n1578 See Letter from West Fraser, "Certain Softwood Lumber Products from Canada. Case No. A-122-857: Rebuttal Comments on Product Characteristics," dated February 13, 2017, at 2-7.

While Central Canada claims that EWP is often cut to secondary manufacturer's specifications, this is hardly unique to EWP. Not only does the dimensional lumber cited throughout this record consist of many lengths, widths, and thicknesses, but the scope specifies as in-scope merchandise shims, pallet runners, flooring and siding that have been tongued, grooved, molded and rounded. The scope also covers semi-finished lumber, and covers products sold in many shapes and sizes. The shapes and sizes of EWP, and the manner in which it is packaged, falls well within the spectrum of how other in-scope-merchandise is packaged and sold.

Central Canada also relies significantly on its assertion that, as opposed to SPF lumber, EWP is used and purchased for its appearance. Being purchased based on appearance is hardly unique to EWP. The National Lumber Grades Authority (NLGA) is replete with types of softwood lumber graded based on appearance. n1579 The ITC found that other premium products such as Redwood and other types of Cedar, including Atlantic White Cedar, are priced based on their appearance. n1580 Likewise, the Department found that many other pines are selected based on appearance. n1581 The ITC noted that, while there is a separate grading system for EWP, EWP is not the only species of softwood lumber for which the grading system is not based on strength. n1582

n1579 See National Lumber Grades Authority, 2014, placed on this record on February 10, 2017, at Section 5.

n1580 See ITC Preliminary Determination at 10.

n1581 See Lumber IL Preliminary Scope Memorandum at 30.

n182Id.

Central Canada also cites to the higher price of EWP relative to average prices of softwood lumber as a reason for finding it to be a distinct class or kind from the merchandise under consideration. However, as noted above, the ITC found that many softwood lumber products, such as Ponderosa Pine, Idaho White Pine, Redwood, Eastern Red Cedar, Yellow Cedar, Port Orford Cedar, Bald Cypress, Atlantic White Cedar, also sell at prices similar to EWP. n1583 While Central Canada notes that the pricing data cited to by the Department are 15 years old, Central Canada has presented no evidence demonstrating that these data and conclusions no longer apply.

n1583 See ITC Preliminary Determination at 14.

Central Canada claims that EWP cannot be used for any of the end uses of typical softwood lumber; yet, based on Central Canada's own assessment, while 75 percent of all softwood lumber is used for construction applications, 25 percent of softwood lumber applications are nonconstruction uses. Both the USDA Forest Service Handbook and the NLGA identify many different applications for softwood lumber, including decking, siding, flooring, products used based on their appearance, fencing, and many other applications structural purposes. n1584 With so many colors, sizes, and densities among the different forms of softwood lumber, the scope of this investigation of softwood lumber includes many different types of wood with many different applications and a wide range of prices - all of which constitute subject merchandise. Further, many single species of softwood lumber have many different applications, as evidenced above, and thus EWP is not distinct from the softwood lumber covered by the scope of this investigation in that it has many different potential applications.

n1584 See USDA Forest Service Handbook and Memorandum, "Certain Softwood Lumber Products from Canada: NLGA," dated February 10, 2017.

With respect to EWP sales information, aside from a declaration placed on the record from a sales manager of a company arguing to exclude EWP, n1585 Central Canada has provided few details demonstrating how EWP is sold in different channels of trade from other softwood lumber, despite being provided with ample opportunity to do so. This declaration stands in contrast to other record evidence. As noted above, the USDA noted that other species of softwood lumber are used in identical applications as EWP, and the ITC found that other softwood lumber products (such as Ponderosa Pine, Idaho White Pine, Redwood, Eastern Red Cedar, Yellow Cedar, Port Orford Cedar, Bald Cypress, Atlantic White Cedar) also sell at prices similar to EWP. n1586 Central Canada claims that EWP is sold predominantly in eastern North America and shipped by truck, while Western White Pine is sold predominantly in the west.Even if true, this only distinguishes EWP from Western White Pine and not the myriad of other softwood lumber products on the record, and Central Canada has not demonstrated that being shipped by truck in the more densely populated eastern North America is unique to EWP. Thus, there is nothing on this record that would distinguish our analysis from our decision in Lumber IV, where we found that the information on the record did not substantiate the claim that EWP is "sold in unique and distinguishable channels." n1587

n1585 See OFIA and CIFQ Scope Comments at Attachment 2.

n1586 See ITC Preliminary Determination at 14.

n1587 See Lumber IV Final AD Determination IDM at Comment 52.

As discussed above and demonstrated on the record, softwood lumber consists of many species that create a spectrum of densities, applications, appearances, and many other characteristics. Further, each species of softwood lumber has a multitude of applications. If the Department were to categorize each species of softwood lumber into groups that had the same applications and average prices, the result would likely be a determination that there are as many kinds and classes of merchandise as there are softwood lumber species. Not only would such a result be impossible to administer, as discussed above and in the Preliminary Scope Memorandum, the ITC Preliminary Determination, and in Lumber IV, such precision in determining separate classes and kinds of merchandise is inconsistent with the application of the Diversified Products criteria to softwood lumber. This is because many, if not most, species of lumber, such as EWP,do not just have one defining use or physical characteristic, but instead have a wide range of overlapping physical characteristics, end uses, customer expectations, and selling strategies. For instance, while softwood lumber species A may have a different primary application than softwood lumber species B, the secondary application of A, often overlaps with the primary application of B.

Central Canada has not cited to an example of an instance where all five Diversified Products criteria differ with respect to EWP and all other species of softwood lumber. This is due to the wide-ranging and overlapping characteristics of softwood lumber. Thus, we continue to find that EWP is not sufficiently different from the range of products subject to these investigations to be considered a separate class or kind of merchandise from the merchandise under consideration. Additionally, the petitioner has not supported an exclusion for these species, and we defer to its intention to have this merchandise covered by the scope of the investigations.

Comment 104: Whether the Department Should Conduct a Pass-Through Analysis for Independent Remanufacturers That Purchase Softwood Lumber at Arm's Length

The GOC argues that this case could have a substantial impact on a significant number of independent remanufacturers who do not hold harvest rights on Crown lands, are not affiliated or cross-owned with entities that hold harvest rights on Crown lands, and that purchase all their lumber in arm's-length transactions. n1588 Citing a decision from the CAFC and a WTO determination, the GOC argues that the Department may not presume a pass-through of a benefit in arm's-length transactions and, therefore, in the case of independent remanufacturers, the Department must conduct a pass-through analysis before it may countervail any alleged subsidies on the lumber that independent remanufacturers use to produce remanufactured products. n1589 The GOC further argues that the Department should establish a separate "all-others" rate for independent remanufacturers in this final determination, which incorporates a pass-through analysis. n1590

n1588 See GOC Etal Common Issues Case Brief at 108.

nl589 Id. at 109.

n1590 Id. at 110-1154.

Department's Position: In essence, the GOC is arguing for a countervailing duty analysis to be performed for independent remanufacturers not selected as mandatory respondents and who did not seek to be examined as voluntary respondents. However, when we conduct a company-specific, rather than an aggregate, investigation, and we limit our selection of respondents, we do not conduct a countervailing duty analysis'including a pass-through analysis'for companies that are not individually examined. None of the cases cited by the GOC contradict this position. Although the cases cited by the GOC suggest that the Department may conduct a pass-through analysis where a company is individually examined, n1591 or where we conduct an investigation on an aggregate basis, n1592 the GOC has failed to support its contention that the Department must conduct a pass-through analysis for respondents that would fall into the "all-others" category.

n1591 Id. at 108-109 (citing [*Delverde, Sr L v. United States, 202 F.3d 1360, 1366-67 (CAFC 2000)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YHV-X7X0-003B-90V3-00000-00&context=) sad [*Allegheny Ludlum Corp. v. United States, 367 F.3d 1339, 1347 (CAFC 2004).*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CCK-PSW0-003B-9068-00000-00&context=)

n1592 See id. at 109 (citing US - Softwood Lumber IV). We also note that the Department is governed by U.S. law, which is, in turn, fully consistent with our WTO obligations. As we have explained, our decision not to conduct a pass-through analysis for not not-individually examined remanufacturers in this determination is fully consistent with the Act.

Rather, the all-others rate established in AD and CVD proceedings is established to cover such scenarios: a rate applicable to all non-selected companies exporting softwood lumber products to the United States meeting the description of the scope of these investigations. Pursuant to section 705(c)(l)(B)(i)(I) of the Act, the Department will determine the estimated countervailable subsidy rate for each exporter and producer individually investigated, and will determine, in accordance with section 705(c)(5) of the Act, the estimated all-others rate for all exporters and producers not individually investigated. Section 705(c)(5) unambiguously directs that, where the Department conducts a company-specific investigation, "the all others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely (using facts available with an adverse inference]." n1593 Thus, the Department has no authority to establish a different rate for certain subcategories of exporters and producers other than through the rates calculated for individually examined exporters and producers. We have calculated the all-others rate, which will apply to independent remanufacturers, as directed by the statute. However, as noted above, exporters and producers seeking their own CVD rate can request that they be individually reviewed as part of an expedited review after the publication of the CVD order, should the ITC reach an affirmative injury determination. A company that receives a de minimis or zero subsidy rate in an expedited review will be excluded from the CVD order.

n1593 See section 705(c)(5)(A)(i) of the Act (emphasis added). See also section 777A(e)(2) of the Act ("The individual countervailable subsidy rates determined … shall be used to determine the all-others rate under section 705(c)(5).").

Comment 105: Whether Countervailing Duties Should Only Be Applicable on a First Mill Basis

The GOC notes that the mandatory respondents' sales of in-scope merchandise are of dimensional lumber and the subsidy allegations for the most part relate to dimensional lumber as well. Thus, the GOC argues, any calculated subsidy rate for all intents and purposes will be a subsidy rate for dimensional lumber, similar to what was done in a prior lumber proceeding. n1594 Accordingly, the Department should order that duties to be collected on the same basis, which is essentially a first mill basis. The GOC argues that it would be unfair to apply CVD cash deposit rates to the extra value added by remanufacturing, which is unrelated to the alleged subsidies. n1595

1594 Id. at 115.

1595 Id.

Department's Position: Absent any product exclusions or other exclusions based on a de minimis or zero subsidy rate, this investigation covers all softwood lumber products entering the United States that meet the description of the scope of these investigations, including any remanufactured products. In accordance with section 705(c)(l)(B)(ii) of the Act, we will direct CBP to collect cash deposits on merchandise subject to this investigation (including remanufactured products that are in-scope) "in an amount based on the estimated individual countervailable subsidy rate, the estimated all-others rate, or the estimated country-wide subsidy rate, whichever is applicable." Because, as discussed in Comment 104, the statute requires that the all-others rate applicable to exporters and producers other than the five individually-examined respondents be based on those individually-examined rates, and because the statute further requires the Department to instruct CBP to order the posting of cash deposits in the amount of the estimated all-others rate, we will not direct CBP to instead require duties only on a first mill basis. Further, to the extent the GOC is arguing that First Mills should be examined individually, as noted elsewhere, the Department continues to find that it does not have the authority to conduct a company exclusion process in the context of this investigation for respondents that have not been individually-investigated.

Comment 106: Whether the Department Should Exclude Softwood Lumber Products from New Brunswick

Subsequent to the Preliminary Determination, the Department excluded from the investigation softwood lumber products certified by the ALB to be both harvested and produced in Newfoundland and Labrador, Nova Scotia, and Prince Edward Island. n1596 The GNB argues that the Department should exercise its authority and also exclude New Brunswick products from this investigation because not doing so would result in a grave injustice to lumber producers in the province ofNew Brunswick. Specifically, the GNB contends that it would be grossly unfair for the Department to apply the 19.88 percent preliminary all-others rate to New Brunswick softwood lumber producers because it has no semblance of reality, particularly in light of the oligopsony effect the Department preliminarily identified in the New Brunswick stumpage market. n1597 The GNB notes that if JDIL's calculated subsidy rate, as adjusted for the arguments made by JDIL in its case and rebuttal briefs are adopted, falls below one percent for the final determination, then the other producers in New Brunswick should also have a similar rate. The GNB also argues that there is also a lack of concern from the U.S. industry about subsidies being received by softwood lumber producers from the Maritime provinces, including New Brunswick. n1598 Finally, the GNB argues that excluding softwood lumber products from New Brunswick would reduce the Department's administrative burden by avoiding the need for individual company reviews for each producer in New Brunswick.

n1596 See Preliminary Exclusion Memorandum.

n1597 See GNB Case Brief at 48-49.

n1598 Id. at 49.

Department's Position: On May 5, 2017, the petitioner amended the scope in the Petition, n1599 indicating that it had no interest in seeking relief in connection with Canadian exports oflumber both harvested and produced in the Atlantic Provinces. n1600 The petitioner has not alleged subsidies provided by the governments of the Atlantic Provinces, and none of the mandatory respondents reported producing softwood lumber products in these provinces. n1601 On June 23, 2017, in response to arguments and upon consideration of the Petition Amendment, the Department preliminarily determined that certain softwood lumber products certified by the ALB as being first produced in the Atlantic Provinces from logs harvested in these provinces are excluded from the scope of the AD and CVD investigations. n1602 In that Preliminary Exclusion Memorandum, the Department did not exclude softwood lumber products from New Brunswick.

n1599 See Petitioner Amendment to the Petition.

n1600 Provinces of Newfoundland and Labrador, Nova Scotia, and Prince Edward Island.

n1601 Id.

n1602 See Preliminary Exclusion Memorandum at 1.

In this CVD investigation, we preliminarily found that JDIL, a lumber producer in New Brunswick being examined as a voluntary respondent, received countervailing subsidies, including subsidized stumpage, at a CVD rate of3.02 percent. In the final determination, the record supports continuing to find that JDIL received countervailable subsidies. To the extent that the GNB argues that "if the Department's unproven theory of there being an oligopsony in the New Brunswick market is actually true, then the small producers in the province with less control of the market would pay a higher price for stumpage than JDIL and therefore would receive a lower subsidy margin than JDIL." n1603 This argument is speculative, and, in any event, because we continue to determine that JDIL received countervailable subsidies, we have no information on the record to demonstrate that all other softwood lumber producers in the province would have received de minimis subsidies. We are particularly unwilling to engage in such speculation when individual softwood lumber producers may request an expedited review for the Department to determine an individual subsidy rate.

n1603 See GNB Case Briefat 48-49.

With respect to the suggestion that other softwood lumber producers in New Brunswick should receive the same CVD rate as JDIL, section 705(c)(l)(B)(i)(I) of the Act directs the Department to determine the estimated countervailable subsidy rate for each exporter and producer individually investigated and determine, in accordance with section 705(c)(5) of the Act, the estimated all-others rate for all exporters and producers not individually investigated. Section 705(c)(5) unambiguously directs that, where the Department conducts a company-specific investigation as it is doing here, "the all others rate shall be an amount equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and de minimis countervailable subsidy rates, and any rates determined entirely (using facts available with an adverse inference]." n1604 Thus, the Department has no authority to establish a different rate for certain subcategories of exporters and producers other than through the rates calculated for individually examined exporters and producers. Accordingly, we have calculated the all-others rate, which will apply to those producers and exporters in New Brunswick that were not selected for individual examination, as directed by the statute.

n1604 See section 705(c)(5)(A)(i) of the Act (emphasis added). See also section 777A(e)(2) of the Act ("The individual countervailable subsidy rates determined … shall be used to determine the all-others rate under section 705(c)(5).").

In addition, we note that the petitioner did not amend the Petition to exclude products from New Brunswick from these investigations. As we stated in the Preliminary Exclusion Memorandum, it is the Department's general practice to defer to the intent of the petitioner and fulfill the Department's statutory mandate to provide, where appropriate, the relief requested by the petitioning industry. n1605 Therefore, because we continue to find that countervailable subsidies exist in New Brunswick, and received by JDIL, and because the Petitions Amendment did not seek to exclude softwood lumber products from New Brunswick, we have not excluded New Brunswick from these investigations for the final determination. However, as noted above, exporters seeking their own CVD rate can request an expedited review after the publication of the CVD order. A company that receives a de minimis or zero subsidy rate in an expedited review will be excluded from the CVD order.

n1605 Id. at 5-6.

Comment 107: Whether the Department Should Finalize the Exclusion of Softwood Lumber Products from the Atlantic Provinces

As noted above in Comment 106, subsequent to the Preliminary Determination, the Department excluded from the investigation softwood lumber products certified by the ALB as being both harvested and produced in the Atlantic provinces. n1606 The GNS supports the Department's exclusion as articulated in the Preliminary Exclusion Memorandum, but wants to alleviate any concerns that the Department may have regarding CBP's ability to effectively administer this exclusion. Specifically, the GNS argues that given CBP's long history with this exclusion (over three decades), CBP has experience administering a scope exclusion covering these types of softwood lumber products. n1607 Moreover, given the close parallel between the previous certificate from the prior cases and the SLA, CBP will be familiar with the document and the exclusion process. n1608 In addition, the GNS notes that given CBP's experience with certifications in other cases, it is clear this process is familiar to CBP, making this exclusion process manageable, removing any concerns from the parties to this proceeding. n1609 Finally, the GNS argues that CBP can leverage its experience to effectively monitor and enforce the exclusion by, for example, requiring that the ALB certificate be included with each entry and/or requiring that the ALB certificate of origin number be identified on each CBP Form 7501. The Department also has the authority to prescribe how CBP must administer the exclusion.

n1606 See Preliminary Exclusion Memorandum at 1.

n1607 See Nova Scotia Scope Case Brief at 2.

n1608 Id. at 3.

n1609 Id. at 3-4

Department's Position: We agree with the GNS and given that no party challenged the Department's Preliminary Determination to exclude from the investigation softwood lumber products certified by the ALB as being both harvested and produced in the Atlantic provinces, we have adopted this exclusion for the final determination. We have also determined that we will instruct CBP to require that the ALB certificate be included with each entry and require that the ALB certificate of origin number be identified on each CBP Form 7501, for such entries to be excluded from the scope of the order, if issued. If an order is issued, we will instruct CBP to refund cash deposits collected on any suspended entries accompanied with the ALB certificate.

Conclusion

Based on our analysis of the comments received, we recommend adopting all the above positions. If these recommendations are accepted, we will publish the final determination in the Federal Register, and we will notify the ITC of our determination.

Agree --------- Disagree ---------

/S/ Gary Taverman

-----------------

   Gary Taverman

   Deputy Assistant Secretary

   for Antidumping and Countervailing Duty Operations,

   performing the non-exclusive functions and duties of the

   Assistant Secretary for Enforcement and Compliance

11/1/2017

---------------

    (Date)

This section is sorted by Complete Name.

Acronym/Abbreviation        Complete Name

Abitibi-Bowater             Abitibi-Bowater Canada Inc.

ACCA                        Accelerated Capital Cost Allowance

AR                          Administrative Review

AFA                         Adverse Facts Available

AGFOR                       AGFOR Inc.

SCM Agreement               Agreement on Subsidies and Countervailing

                           Measures

AFoA                        Alberta Forests Act

AFRIR                       Alberta Forests Resources Improvement ***Regulation***

                           - AR 38/2013

Joint Management Committee Alberta Joint Energy/Utility and Forest Industry

                           Management Committee

AMAF                        Alberta Ministry of Agriculture and Forestry

ASR                         Alberta Scaling ***Regulation*** - AR 195/2002

ATMR                        Alberta Timber Management ***Regulation*** - AR

                           404/1992

AAC                         Annual Allowable Cut

AOP                         Annual Operating Plans

AWS                         Annual Work Schedule

AD                          Antidumping Duty

AJCTC                       Apprenticeship Job Creation Tax Credit

ARTT                        Arrangement and Reduction of Work Time

ACOA                        Atlantic Canada Opportunities Agency

AIF                         Atlantic Innovation Fund

AITC                        Atlantic Investment Tax Credit

ALB                         Atlantic Lumber Board

ACE                         Automated Commercial Environment

AHA                         Available Harvest Area

AUV                         Average Unit Volumes

AUL                         Average Useful Life

Barrette                    Barrette Wood, Inc.

BPCP                        Bioenergy Producer Credit Program

BPP                         Bioenergy Producer Program

Bowater                     Bowater Canadian Ltd.

BC                          British Columbia

BCAA                        British Columbia Assessment Authority

BCLTC                       British Columbia Lumber Trade Council

BCTS                        British Columbia Timber Sales

BCUC                        British Columbia Utilities Commission

BPI                         Business Proprietary Information

CRA                         Canada Revenue Agency

CAD                         Canadian Dollars

CFP                         Canadian Forest Products, Ltd.

Canfor                      Canfor Corporation, Canfor Wood Products

                           Marketing Ltd. and, Canadian Forest Products,

                           Ltd.

Canfor                      Pulp Canfor Pulp Products Inc.

CWPM                        Can for Wood Products Marketing, Ltd.

Central Canada Alliance     Central Canadian Alliance of the Ontario Forest

                           Industries Association and the CIFQ

Softwood Lumber             Certain Softwood Lumber Products

CFR                         Code of Federal ***Regulations***

CTP                         Commercial Timber Permits

Petitioner                  Committee Overseeing Action for Lumber

                           International Trade Investigations or

                           Negotiations (a.k.a. COALITION)

CCTP                        Coniferous Community Timber Permit (and License)

Quota                       Coniferous Timber Quota Certificates

CTQ                         Coniferous Timber Quotas

CIFQ                        Conseil de l'Industrie Forestiere du Quebec

CEP                         Consultation for Employment Program

CVD                         Countervailing Duty

CAFC                        Court of Appeals for the Federal Circuit

CIT                         Court of International Trade

CFSA                        Crown Forest Sustainability Act

CLFA                        Crown Lands and Forests Act

Deloitte                    Deloitte LLP

DSM                         Demand Side Management

DERD                        Department of Energy and Resource Development

DFATD                       Department of Foreign Affairs, Trade and

                           Development

DNR                         Department of Natural Resources

DBH                         Diameter at Brest Height

Hendricks Report            Dr. Kenneth Hendricks - An Economic Analysis of

                           the Ontario Timber Market and an Examination of

                           Private Market Prices in that ***Competitive*** Market

                           (March 10, 2017) (see GOO Primary QNR Response at

                           Exhibit ON-PRIV-2)

EACOM                       EACOM Timber Corporation

EPA                         Electricity Purchase Agreement

eFAR                        Electronic Facility Annual Return

EIPA                        Export and Import Permits Act

EDC                         Export Development Canada

EGP                         Export Guarantee Program

FPPGTP                      Federal Pulp and Paper Green Transformation

                           Program

FTEAC                       Federal Timber Export Advisory Committee

FTC                         Federal Trade Commission

FAIP                        Financial Assistance to Industries Program

FY                          Fiscal Year

FHP                         Forest Harvest Plans

FMA                         Forest Management Agreement

FMP                         Forest Management Plans

FMU                         Forest Management Unit

FRIAA                       Forest Resource Improvement Association of

                           Alberta

FRIP                        Forest Resource Improvement Program

FRL                         Forest Resource License

FRIR                        Forest Resources Improvement ***Regulation***

FortisBC                    FortisBC Inc.

G&A                         General and Administrative

GDP                         General Development Plans

GWh                         Gigawatt Hours

GTA                         Global Trade Atlas

GOA                         Government of Alberta

GBC                         Government of British Columbia

GOC                         Government of Canada

GOM                         Government of Manitoba

GNB                         Government of New Brunswick

GNS                         Government of Nova Scotia

GOO                         Government of Ontario

GOQ                         Government of Quebec

GOS                         Government of Saskatchewan

HST                         Harmonized Sales Tax

HTS                         Harmonized Tariff Schedule

HTSUS                       Harmonized Tariff Schedule of the United States

HBS                         Harvest Billing System

HHI                         Herfindahl-Hirschman Methodology

IKEA                        IKEA Supply AG and IKEA Distribution Services

                           Inc.

IPI                         Implict Price Index

ITA                         Income Tax Act

ITR                         Income Tax ***Regulations***

IESO                        Independent Electricity System Operator

IPP                         Independent Power Producer

IQR                         Initial Questionnaire Response

IFTA                        International Fuel Tax Agreement

IPL                         Irving Paper Limited

IPP                         Irving Pulp & Paper, Limited

IDM                         Issues and Decision Memorandum

JDIL                        J.D. Irving Limited

Jendro & Hart Report        Jendro & Hart, LLC - Critique of Petitioner's

                           Proposed Cross-Border Subsidy Methodology (March

                           13, 2017) (see GBC Primary QNR Response Part 1 at

                           Vol. I Exhibit BC-S-183)

BC Dual Scale Study         Jendro & Hart, LLC - Dual-Scale Study of the

                           Principal Conifer Species of the Interior British

                           Columbia Applying the BC Metric and Scribner

                           Short Log Measurement Rules (2016) (See Appendix

                           A of Jendro & Hart report contained in GBC

                           Primary QNR Response Part 1 at Vol. I Exhibit BC-

                           S-183)

Kalt Report                 Kalt, Joseph - Economic Analysis of Remuneration

                           for Canadian Crown Timber: Are In-Jurisdiction

                           Benchmarks Distorted by Crown Stumpage? (see GOC

                           Etal Primary QNR at Exhibit GOC-Stump-5)

KPMG Report                 KPMG LLP - Report on 2015-16 Ontario Softwood

                           Timber Costs and Sources (March 6, 2017) (see GOO

                           Primary QNR at Exhibit ON-PRIV-1)

LUP                         Lake Utopia Paper

LBIP                        Land-Based Investment Program and Successor

                           Programs

LIREPP                      Large Industrial Renewable Energy Purchase

                           Program

LTAR                        Less Than Adequate Remuneration

LMF                         License Management Fee

LCIA                        London Court of International Arbitration

Maibec                      Maibec Inc.

MITC                        Manitoba's Manufacturing Investment Tax Credit

M&P ITC                     Manufacturing and Processing Investment Tax

                           Credit

M&P                         Manufacturing and Processing Tax Credit

MPS                         Market Pricing System

Marshall Report             Marshall, Robert C. - Expert Report (March 2017)

                           (see GOQ Primary QNR at Exhibit QC-Stump-78)

MWh                         Megawatt Hours

MW                          Megawatts

MFLNRO                      Ministry of Forests, Lands and Natural Resource

                           Operations

MFFP                        Ministry of Forests, Wildlife and Parks

MTESS                       Ministry of the Work, Employment and Social

                           Solidarity

MNP Ontario Survey          MNP LLP - A Survey of the Ontario Private Timber

                           Market (March 3,2017) (see GOO Primary QNR at

                           Exhibit ON-PRIV-1)

Montana Lumber              Montana Reclaimed Lumber Co.

MTAR                        More Than Adequate Remuneration

MPB                         Mountain Pine Beetle

NB                          New Brunswick

NBDNR                       New Brunswick Department of Natural Resources

NBLP                        New Brunswick Lumber Producers

NB Power                    New Brunswick Power

NFI                         New Factual Information

NSA                         New Subsidy Allegations

NAFP                        North America Forest Products Ltd.

NAFTA                       North American Free Trade Agreement

NAICS                       North American Industry Classification System

NS                          Nova Scotia

NSDNR                       Nova Scotia Department of Natural Resources

NSUARB                      Nova Scotia Utility and Review Board

OFIA                        Ontario Forest Industries Association

FSPF                        Ontario Forest Sector Prosperity Fund

NIER                        Ontario Northern Industrial Electricity Rate

OIC                         Order in Council

ODNR                        Oregon Department of Natural Resources

OCFP                        Oregon-Canadian Forest Products Inc.

PNW                         Pacific Northwest

PCIP                        Partial Cut Investment Program

POI                         Period of Investigation

POR                         Period of Review

PDM                         Preliminary Decision Memorandum

PwC                         Price water house Coopers

PFTF Report                 Private Forest Task Force Report

Petit-Pans                  Produits Forestiers Petit-Paris Inc.

PAE 2011-01                 Purchase Power Program 2011-01

QR                          Questionnaire Response

CAR                         Reclassification of Assistance Committee

R&D                         Research and Development

RDTC                        Research and Development Tax Credit

RV                          Residual Value

Resolute Forest Products    Resolute Forest Products Inc.

Resolute                    Resolute FP Canada Inc.

Resolute Growth             Resolute Growth Canada Inc.

Resolute Sales              Resolute Sales Inc.

RILA                        Retail Industry Leaders Association

SAFIS                       Safety Achievement Financial Incentive System

SR&ED                       Scientific Research and Experimental Development

SR&ED- GOA                  Scientific Research and Experimental Development

                           Tax Credit - Alberta

SR&ED-GBC                   Scientific Research and Experimental Development

                           Tax Credit - British Columbia

SR&ED-Quebec                Scientific Research and Experimental Development

                           Tax Credit - Manitoba

SR&ED-GOM                   Scientific Research and Experimental Development

                           Tax Credit - Quebec

SMB                         Small and Medium-Sized Businesses

Opitciwan                   Societe en Commandite Scierie Opitciwan

SLA                         Softwood Lumber Agreement

SPF                         Spruce-Pine-Fir

SGP                         St. George Power LP

SAA                         Statement of Administrative Action (From the

                           URAA)

STATCAN                     Statistics Canada

Stoner & Mercurio Report    Stoner, Robert and Mercurio, Matthew - Economic

                           Analysis of Price Distortions in a Dominant-

                           Firm/Fringe Market (January 2002) (see Petition

                           at Exhibit 105)

SFDA                        Sustainable Forest Development Act

SFL                         Sustainable Forest License

Act                         Tariff Act of 1930, As Amended

TEFU                        Tax Exempt Fuel Use

Terminal                    Terminal Forest Products Ltd.

June 1 Aid Package          The GOC's June 1, 2017, announcement of

                           additional assistance to forest industry workers

                           and communities

Canadian Parties            The Governments of Canada (GOC), Alberta (GOA),

                           British Columbia (GBC), Manitoba (GOM), Ontario

                           (GOO), Quebec (GOQ), and Saskatchewan (GOS), the

                           Alberta Softwood Lumber Trade Council, and the

                           British Columbia Lumber Trade Council; the

                           Government of New Brunswick (GNB); Tolko

                           Marketing and Sales Ltd. and Tolko Industries

                           Ltd. (Tolko); West Fraser Mills Ltd. (West

                           Fraser); Can for Corporation (Can for); Resolute

                           FP Canada (Resolute); and J.D. Irving, Limited

                           (JDIL)

MBF                         Thousand Board Feet

TDA                         Timber Damage Assessment

TEAC                        Timber Export Advisory Committee

TMR                         Timber Management ***Regulation***

TSL                         Timber Sale License

TSG                         Timber Supply Guarantee

Tolko                       Tolko Marketing and Sales Ltd.

CBP                         U.S. Customs and Border Protection

Department                  U.S. Department of Commerce

ITC                         U.S. International Trade Commission

UFP                         UFP Western Division, Inc. and UFP Eastern

                           Division, Inc., and their various operating

                           affiliates and subsidiaries within the U.S.

USDOJ                       United States Department of Justice

USFS                        United States Forest Service

URAA                        Uruguay Round Agreements Act

VLM                         Vancouver Log Market

Woodtone                    W.I. Woodtone Industries Inc.

WDNR                        Washington Department of Natural Resources

West Fraser                 West Fraser Mills Ltd.

BMMB                        Wood Marketing Bureau (Quebec)

WTO                         World Trade Organization

ADMINISTRATIVE DETERMINATIONS, COURT DECISIONS, AND NOTICES, ETC.

TABLE

This section is sorted by Full Citation

Short Citation                Administrative Case Determinations/Court

                             Decisions

2006 SLA                      2006 Softwood Lumber Agreement Between the

                             Government of the United States of America and

                             the Government of Canada Extending the Softwood

                             Lumber Agreement Between the Government of the

                             United States of American and the Government of

                             Canada, As Amended (Jan. 23, 2012)

Acciai Speciali Terni S.p.A Acciai Speciali Terni S.p.A. v. United States,

[*26 Ct. Int'l Trade 148, 167 (2002)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:459P-RS60-003S-N09S-00000-00&context=)

AK Steel                      AK Steel Corp. v. United States, 192F.3d 1367,

                             1384 (Fed.Cir. 1999).

Algoma Steel Corp.            Algoma Steel Corp. v. United States, 865 F.2d

                             240, 243 (Fed. Cir. 1989)

Allegheny Bradford            Allegheny Bradford Com. v. United States, 342

                             F. Supp. 2d 1172, 1187-88 (CIT 2004)

Allegheny I                   Allegheny Ludlum Corp. v. United States, 112 F.

                             Supp. 2d 1141, 1150 (CIT 2000)

Allegheny II                  Allegheny Ludlum Corp. v. United States, 25 Ct.

                             Int'l Trade 816, 821 (2001)

Aluminum Extrusions from the Aluminum Extrusions from the People's Republic

PRC First Review              of China: Final Results of Countervailing Duty

                             Administrative Review; 2010 and 2011, [*79 FR 106*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5B69-8HV0-006W-81WH-00000-00&context=)

                             (January 2, 2014)

Ansaldo Componeti, S.p.A.     Ansaldo Componeti, S.p.A. v. United States, 628

                             F. Supp. 198, 205 (CIT 1986)

Preliminary Critical          Antidumping and Countervailing Duty

Circumstances Determination Investigations of Certain Softwood Lumber

                             Products from Canada: Preliminary

                             Determinations of Critical Circumstance, 82 FR

                             19219 (April 26, 2017)

Preamble                      Antidumping Duties; Countervailing Duties;

                             Final Rule, 62 FR 27296 (May 19, 1997)

WTO Appellate Body Decision - Appellate Body Report, United States -

HRS from India                Countervailing Measures on Certain Hot-Rolled

                             Carbon Flat Products from India, WT/DS436/AB/R,

                             AB-2014-07 (December 8, 2014)

WTO Appellate Body Decision - Appellate Body Report, United States -

Certain Products from the PRC Countervailing Measures on Certain Products

                             from China, WT/DS437/AB/R, AB-2014-08 (December

                             18, 2014)

WTO Appellate Body Decision - Appellate Body Report, United States - Final

Lumber from Canada            Countervailing Duty Determination with Respect

                             to Certain Softwood Lumber from Canada, 163,

                             WT/DS257/AB/R (19 Jan. 2004)

Beijing Tianhai               Beijing Tianhai Industry Co., Ltd. v. United

                             States, 52 F. Supp. 3d at 1374 (CIT2015)

Borusan                       Borusan Mannesmann Boru Sanayi v Ticaret A.S.

                             v. [*United States, 61 F. Supp. 3d 1306, 1325*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5FTM-4B81-F04B-W00F-00000-00&context=)

                             (CIT 2015)

Refrigerators from Korea -    Bottom Mount Combination Refrigerator-Freezers

Final                         From the Republic of Korea: Final Affirmative

                             Countervailing Duty Determination, *77 FR 17410*

                             (March 26, 2010)

Refrigerators from Korea      Bottom Mount Combination Refrigerator-Freezers

                             from the Republic of Korea: Preliminary

                             Negative Countervailing Duty Determination and

                             Alignment of Final Determination with Final

                             Antidumping Determination, 76 FR 55044

                             (September6, 2011)

Canada Feed-In Tariff Program Canada - Measures Relating to the Feed-In

                             Tariff Program, (WT/DS426/AB/R), adopted May 6,

                             2013

Cut-To-Length Plate From the Certain Carbon and Alloy Steel Cut-To-Length

Republic of Korea             Plate From the Republic of Korea: Final

                             Affirmative Countervailing Duty Determination

                             and Final Negative Critical Circumstances

                             Determination, 82 FR 16341 (April 4, 2017)

CPP from Indonesia            Certain Coated Paper Suitable for High-Quality

                             Print Graphics Using Sheet-Fed Presses from

                             Indonesia: Final Affirmative Countervailing

                             Duty Determination, 75 FR 59209 (September 27,

                             2010)

Coated Paper                  Certain Coated Paper Suitable for High-Quality

                             Print Graphics Using Sheet-Fed Presses From the

                             People's Republic of China, [*75 FR 59212*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:513X-49C0-006W-83MW-00000-00&context=)

                             (September 27, 2010)

Fresh Cut Flowers from Mexico Certain Fresh Cut Flowers From Mexico; Final

                             Negative Countervailing Duty Determination, 49

                             FR 15007 (April 16, 1984)

Shrimp from Ecuador           Certain Fresh Shrimp from Ecuador: Final

                             Affirmative Countervailing Duty Determination,

[*78 FR 50389*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5958-GRH0-006W-83BH-00000-00&context=) (August 19, 2013)

Shrimp from the PRC           Certain Frozen Warm water Shrimp from the

                             People's Republic of China: Final Affirmative

                             Countervailing Duty Determination, [*78 FR 50391*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5958-GRH0-006W-83BJ-00000-00&context=)

                             (August 19, 2013)

HRS from India 2007 AR        Certain Hot-Rolled Carbon Steel Flat Products

                             from India: Final Results and Partial

                             Rescission of Countervailing Duty

                             Administrative Review, 74 FR 20923 (May 6,

                             2009)

HRS from India 2006 AR        Certain Hot-Rolled Carbon Steel Flat Products

                             from India: Final Results of Countervailing

                             Duty Administrative Review, *73 FR 40295* (July

                             14, 2008)

Kitchen Racks from the        Certain Kitchen Shelving and Racks from the

People's Republic of China    People's Republic of China: Final Affirmative

                             Countervailing Duty Determination, [*74 FR 37012*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4WVD-DCD0-006W-82DW-00000-00&context=)

                             (July 27, 2009)

OTR from the PRC              Certain New Pneumatic Off-the-Road Tires From

                             the People's Republic of China: Final

                             Affirmative Countervailing Duty Determination

                             and Final Negative Determination of Critical

                             Circumstances, 73 FR 40480, 40483 (July 15,

                             2008)

OCTG from Canada              Final Affirmative Countervailing Duty

                             Determination; Oil Country Tubular Goods from

                             Canada, 51 FR 15037 (April 22, 1986)

OCTG from the PRC Review      Certain Oil Country Tubular Goods from the

                             People's Republic of China: Final Results of

                             Countervailing Duty Administrative Review;

                             2011, [*78 FR 49475*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5947-0M20-006W-82V9-00000-00&context=) (August 14, 2013)

OCTG from Turkey              Certain Oil Country Tubular Goods from the

                             Republic of Turkey: Final Affirmative

                             Countervailing Duty Determination and Final

                             Affirmative Critical Circumstances

                             Determination, 79 FR 41964 (July 18, 2014)

Pasta from Italy 2012 AR      Certain Pasta From Italy: Final Results of

                             Countervailing Duty Administrative Review;

                             2012, [*80 FR 11172*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5FDP-GHG0-006W-84X7-00000-00&context=) (March2, 2015)

Pasta from Italy 7th AR       Certain Pasta from Italy: Final Results of the

                             Seventh Countervailing Duty Administrative

                             Review, 69 FR 70657 (December 7, 2004)

Pressure Pipe from the PRC    Certain Seamless Carbon and Alloy Steel

                             Standard, Line, and Pressure Pipe from the

                             People's Republic of China: Final Affirmative

                             Countervailing Duty Determination, Final

                             Affirmative Critical Circumstances

                             Determination, 75 FR 57444 (September 21, 2010)

NAFTA June 7, 2004, Panel     Certain Softwood Lumber Products from Canada,

Decision                      USA-CDA-2002-1904-03 Panel Decision (June 7,

                             2004)

Postponement                  Certain Softwood Lumber Products From Canada:

                             Postponement of Preliminary Determination in

                             the Countervailing Duty Investigation, 82 FR

                             9055 (February 2, 2017)

Initiation                    Certain Softwood Lumber Products from Canada:

                             Initiation of Countervailing Duty

                             Investigation, 81 FR 93897 (December22, 2016)

Preliminary Determination     Certain Softwood Lumber Products From Canada:

                             Preliminary Affirmative Countervailing Duty

                             Determination, and Alignment of Final

                             Determination With Final Antidumping Duty

                             Determination, 82 FR 19657 (April 28, 2017) and

                             accompanying Decision Memorandum (PDM)

AD Preliminary Determination Certain Softwood Lumber Products From Canada:

                             Preliminary Affirmative Determination of Sales

                             at Less Than Fair Value, [*82 FR 29833*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5NX6-6BR0-006W-83JB-00000-00&context=) (June 30,

                             2017)

Nails from the PRC            Certain Steel Nails from the People's Republic

                             of China: Final Determination of Sales at Less

                             Than Fair Value and Partial Affirmative

                             Determination of Critical Circumstances, 73 FR

                             33977, 33979 (June 16, 2008)

Nails from Oman               Certain Steel Nails from the Sultanate of Oman:

                             Final Negative Countervailing Duty

                             Determination, 80 FR 28958 (May 20, 2015)

Steel Wheels from the PRC     Certain Steel Wheels From the People's Republic

                             of China: Final Affirmative Countervailing Duty

                             Determination, Final Affirmative Critical

                             Circumstances Determination, [*77 FR 17017*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:557N-S0J0-006W-84GS-00000-00&context=)(March

                             23, 2012)

Steel Wheels from the PRC AD Certain Steel Wheels from the People's Republic

                             of China: Notice of Final Determination of

                             Sales at Less Than Fair Value and Partial

                             Affirmative Final Determination of Critical

                             Circumstances, 77 FR 17021 (March23,2012)

CUP from Indonesia            Certain Uncoated Paper from Indonesia: Final

                             Affirmative Countervailing Duty Determination,

[*81 FR 3104*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5HWT-90S0-006W-845D-00000-00&context=) (January 20, 2016)

Changzhou Trina Solar Entergy Changzhou Trina Solar Energy Co. v. United

Co                            States, 195 F. Supp. 3d 1334, 1341-47 (CIT

                             2016)

Chevron v. Nat'l Res. Def     Chevron, U.S.A., Inc. v. Nat'l Res. Def.

Counci                        [*Council, Inc., 467 U.S. 837, 843 (1984)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3BF0-003B-S30X-00000-00&context=)

Chlorinated Isocyanurates     Chlorinated Isocyanurates from the People's

from the People's Republic of Republic of China: Final Results of

China                         Countervailing Duty Administrative Review, and

                             Partial Rescission of Countervailing Duty

                             Administrative Review, 82 FR 27466 (June 15,

                             2017)

Circular Welded Austenitic    Circular Welded Austenitic Stainless Pressure

Stainless Pressure Pipe from Pipe from the People's Republic of China: Final

the PRC Final                 Determination of Sales at Less Than Fair Value,

*74 FR 4913* (January 28, 2009)

Circular Welded Austenitic    Circular Welded Austenitic Stainless Pressure

Stainless Pressure Pipe from Pipe from the People's Republic of China:

the PRC Prelim                Preliminary Determination of Sales at Less Than

                             Fair Value and Postponement of Final

                             Determination, 73 FR 51788 (September 5, 2008)

Circular Welded Carbon-       Circular Welded Carbon-Quality Steel Pipe From

Quality Steel Pipe From the the Sultanate of Oman: Final Affirmative

Sultanate of Oman             Countervailing Duty Determination, [*77 FR 64473*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:56W3-MJB0-006W-820W-00000-00&context=)

                             (October 22, 2012)

CWP from the UAE              Circular Welded Carbon-Quality Steel Pipe from

                             the United Arab Emirates: Final Affirmative

                             Countervailing Duty Determination, [*77 FR 64465*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:56W3-MJB0-006W-820S-00000-00&context=)

                             (October 22, 2012)

Citric Acid from the PRC      Citric Acid and Certain Citrate Salts from the

                             People's Republic of China: Final Results of

                             Countervailing Duty Administrative Review;

                             2010, [*77 FR 72323*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:576G-Y5Y0-006W-8187-00000-00&context=) (December 5, 2012)

CFS from Indonesia            Coated Free Sheet Paper from Indonesia: Final

                             Affirmative Countervailing Duty Determination,

[*72 FR 60642*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4R04-5820-006W-806P-00000-00&context=) (October 25, 2007)

CFS from the PRC              Coated Free Sheet Paper from the People's

                             Republic of China: Final Affirmative

                             Countervailing Duty Determination, [*72 FR 60645*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4R04-5820-006W-806R-00000-00&context=)

                             (October 25, 2007)

Corus Staal BV                [*Corus Staal BV v. United States, 395 F.3d 1343,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4F9F-WTX0-003B-9222-00000-00&context=)

                             1348 (Fed. Cir. 2005)

1988 CVD Preamble             Countervailing Duties, [*53 FR 52306*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDR-VCX0-001J-X3NY-00000-00&context=) (December27,

                             1988)

CVD Preamble                  Countervailing Duties; Final Rule, [*63 FR 65348*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3V5W-0N60-006W-838B-00000-00&context=)

                             (November 25, 1998)

WCP from Oman                 Countervailing Duty Determination, [*77 FR 75975*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:57BY-PWV0-006W-836Y-00000-00&context=)

                             (December 26, 2012)

Tetra from the PRC            Countervailing Duty Investigation of 1,1,1,2

                             Tetrafluoroethane from the People's Republic of

                             China: Final Affirmative Countervailing Duty

                             Determination, 79 FR 62594 (October 20, 2014)

Geogrid Products from the PRC Countervailing Duty Investigation of Certain

                             Biaxial Integral Geogrid Products from the

                             People's Republic of China: Final Affirmative

                             Determination and Final Determination of

                             Critical Circumstances, in Part, [*82 FR 3282*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5MKX-PVV0-006W-82GM-00000-00&context=)

                             (January 11, 2017)

CRS from Brazil               Countervailing Duty Investigation of Certain

                             Cold-Rolled Steel Flat Products from Brazil:

                             Final Affirmative Determination, [*81 FR 49940*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5KBH-F3X0-006W-84W8-00000-00&context=)

                             (July 20, 2016)

CRS from Korea                Countervailing Duty Investigation of Certain

                             Cold-Rolled Steel Flat Products from the

                             Republic of Korea: Final Affirmative

                             Determination, 81 FR 49943 (July 29, 2016)

Corrosion-Resistant Steel     Countervailing Duty Investigation of Certain

from Korea                    Corrosion Resistant Steel Products from the

                             Republic of Korea: Preliminary Affirmative

                             Determination, 80 FR 68842 (November 6, 2015)

HRS from Brazil               Countervailing Duty Investigation of Certain

                             Hot-Rolled Steel Flat Products from Brazil:

                             Final Affirmative Determination, and Final

                             Determination of Critical Circumstances, in

                             Part, 81 FR 53416 (March 24, 2016)

HRS from Korea                Countervailing Duty Investigation of Certain

                             Hot-Rolled Steel Flat Products from the

                             Republic of Korea: Final Affirmative

                             Determination, 81 FR 53439 (August 12, 2016)

Solar Cell from PRC           Crystalline Silicon Photovoltaic Cells, Whether

                             or Not Assembled Into Modules, From the

                             People's Republic of China: Final Results of

                             Countervailing Duty Administration Review, and

                             Partial Rescission of Countervailing Duty

                             Administration; 2014, [*82 FR 32678*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5P1R-XPG0-006W-8504-00000-00&context=) (July 17,

                             2017)

Delverde, Allegheny Fed.      [*Delverde, SrL v. United States, 202 F.3d 1360,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3YHV-X7X0-003B-90V3-00000-00&context=)

Circuit                       1366, 1367 (Fed. Cir. 2000); see also Allegheny

[*Ludlum Corp. v. United States, 367 F.3d 1339,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4CCK-PSW0-003B-9068-00000-00&context=)

                             1347 (Fed. Cir. 2004)

Diversified Products          Diversified Products Corp. v. United States,

[*572 F. Supp. 883, 889 (CIT 1983)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-3B20-003R-S1H1-00000-00&context=)

Sinks from the PRC            Drawn Stainless Steel Sinks from the People's

                             Republic of China: Final Affirmative

                             Countervailing Duty Determination, [*78 FR 13017*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:57V5-TVR0-006W-84DB-00000-00&context=)

                             (February 26, 2013)

Drill Pipe from the PRC       Drill Pipe From the People's Republic of China:

                             Final Results of Countervailing Duty

                             Administrative Review; 2011, 78FR 150 (August

                             5, 2013)

Duferco Steel Inc.            Duferco Steel, Inc. v. United States, 296 F. 3d

                             1087, 1089 (Fed. Cir. 2002)

Essar Steel Ltd.              Essar Steel Ltd. v. United States, 721 F. Supp.

                             2d 1285 (CIT 2010), [*678 F.3d 1268*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:55H5-CYW1-F04B-M07H-00000-00&context=) (Fed. Cir.

                             2012)

Eurodif                       [*Eurodif S.A. v. United States, 411 F.3d 1355*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4FM6-P9V0-003B-9286-00000-00&context=)

                             (CAFC 2005)

Carbon Steel Wire Rod from    Final Affirmative Countervailing Duty

Saudi Arabia                  Determination and Countervailing Duty Order;

                             Carbon Steel Wire Rod from Saudi Arabia, 51 FR

                             4206 (February 3, 1986)

Steel Wire Nails From New     Final Affirmative Countervailing Duty

Zealand                       Determination and Countervailing Duty Order;

                             Certain Steel Wire Nails From New Zealand, 52

                             FR 37196 (October 5, 1987)

Extruded Rubber Thread From Final Affirmative Countervailing Duty

Malaysia                      Determination and Countervailing Duty Order;

                             Extruded Rubber Thread From Malaysia, 57 FR

                             38472 (August 25, 1992)

CRS from Russia               Final Affirmative Countervailing Duty

                             Determination and Final Negative Critical

                             Circumstances Determination, 81 FR49935 (July

                             29, 2016)

Lined Paper from Indonesia    Final Affirmative Countervailing Duty

                             Determination and Final Negative Critical

                             Circumstances Determination: Certain Lined

                             Paper Products from Indonesia, [*71 FR 47174*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4KNC-6JR0-006W-84M9-00000-00&context=)

                             (August 16, 2006)

Ball Bearing From Thailand    Final Affirmative Countervailing Duty

                             Determination and Partial Countervailing Duty

                             Order: Ball Bearing and Parts Thereof From

                             Thailand; Final Negative Countervailing Duty

                             Determinations: Antifriction Bearings (Other

                             Than Bal or Tapered Roller Bearings) and Parts

                             Thereof From Thailand, [*54 FR 19130*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDR-TKP0-001J-X4T4-00000-00&context=) (May 3,

                             1989)

Cut-to-Length Carbon-Quality Final Affirmative Countervailing Duty

Steel Plate from Indonesia    Determination: Certain Cut-to-Length Carbon-

                             Quality Steel Plate from Indonesia, [*64 FR 73155*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3Y6X-4890-006W-84SV-00000-00&context=)

                             (December29, 1999)

CTL Steel Plate from Korea    Final Affirmative Countervailing Duty

                             Determination: Certain Cut-to-Length Carbon-

                             Quality Steel Plate from the Republic of Korea,

[*64 FR 73176, 73182*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3Y6X-4890-006W-84SX-00000-00&context=) (December29, 1999)

Hot-Rolled Carbon Steel Flat Final Affirmative Countervailing Duty

Products From Thailand        Determination: Certain Hot-Rolled Carbon Steel

                             Flat Products From Thailand, [*66 FR 50410*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4446-TY00-006W-8532-00000-00&context=)

                             (October 3, 2001)

Pasta From Italy              Final Affirmative Countervailing Duty

                             Determination: Certain Pasta From Italy, 61 FR

                             30288, 30289 (1996)

Steel from Austria            Final Affirmative Countervailing Duty

                             Determination: Certain Steel Products from

                             Austria, 58 FR 37217 (July 9, 1993)

Cold-Rolled Carbon Steel      Final Affirmative Countervailing Duty

Flat-Rolled Products From     Determination: Cold-Rolled Carbon Steel Flat-

Korea                         Rolled Products From Korea; and Final Negative

                             Countervailing Duty Determination; Carbon Steel

                             Structural Shapes From Korea, [*49 FR 47284*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDB-2210-001T-92C4-00000-00&context=)

                             (December 3, 1984)

DRAMS from Korea              Final Affirmative Countervailing Duty

                             Determination: Dynamic Random Access memory

                             Semiconductors from the Republic of Korea, 68

                             FR 37122 (June 23, 2003)

Steel Wire Rod From Trinidad Final Affirmative Countervailing Duty

and Tobago                    Determination: Steel Wire Rod From Trinidad and

                             Tobago, 62 FR 55003 (October 22, 1997)

Steel Wire Rod from Venezuela Final Affirmative Countervailing Duty

                             Determination: Steel Wire Rod from Venezuela,

[*62 FR 55014*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SD3-YTX0-006X-W3J9-00000-00&context=) (October 22, 1997)

Hot-Rolled Steel from         Final Affirmative Countervailing Duty

Thailand                      Determination: Certain Hot-Rolled Carbon Steel

                             Flat Products From Thailand, [*66 FR 50410*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4446-TY00-006W-8532-00000-00&context=)

                             (October 3, 2001)

Fresh Cut Flowers from the    Final Affirmative Countervailing Duty

Netherlands                   Determination; Certain Fresh Cut Flowers from

                             the Netherlands, [*52 FR 3301*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDB-0RK0-001J-B0VV-00000-00&context=) (February 3, 1987)

SSP from Belgium              Final Affirmative Countervailing Duty

                             Determination; Stainless Steel Plate in Coils

                             from Belgium, [*64 FR 15567*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3W4P-8F20-006W-81XP-00000-00&context=) (March 31, 1999)

Certain Steel Products From Final Affirmative Countervailing Duty

Korea                         Determinations and Final Negative Critical

                             Circumstances Determinations: Certain Steel

                             Products From Korea, [*58 FR 37338*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SHH-RGF0-006W-93RC-00000-00&context=) (July 9, 1993)

Magnesium From Canada         Final Affirmative Countervailing Duty

                             Determinations: Pure Magnesium and Alloy

                             Magnesium From Canada, *57 FR 30946* (July 13,

                             1992)

Silica Bricks and Shapes from Final Determination of Sales at Less Than Fair

the PRC                       Value: Silica Bricks and Shapes From the

                             People's Republic of China, [*78 FR 70918*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:59XM-C0S0-006W-83G9-00000-00&context=)

                             (November 27, 2013)

Steel Plate from Korea        Final Negative Countervailing Duty

                             Determination: Stainless Steel Plate in Coils

                             from the Republic of Korea, [*64 FR 15530*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3W4P-8F20-006W-81XM-00000-00&context=) (March

                             31, 1999)

Live Swine from Canada (II) Final Negative Countervailing Duty

                             Determination: Live Swine from Canada, 70 FR                              12186 (March 11, 2005)

Granite Products from Italy Final Negative Countervailing Duty

                             Determination; Certain Granite Products from

                             Italy, 53 FR 27197 (July 19, 1988)

Certain Textile Mill Products Final Negative Countervailing Duty

and Apparel from Singapore    Determinations; Certain Textile Mill Products

                             and Apparel from Singapore, [*50 FR 9840*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:3SDB-1H10-001T-9205-00000-00&context=) (March

                             12, 1985)

Lumber NSR                    Final Results of Countervailing Duty New

                             Shipper Review: Certain Softwood Lumber

                             Products from Canada, [*70 FR 56640*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4H6P-85Y0-006W-849N-00000-00&context=) (September

                             28, 2005)

Geneva Steel                  [*Geneva Steel v. United States, 914 F.Supp. 563,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S65-81T0-003S-N0M2-00000-00&context=)

                             609 (CIT 1996)

IPA from Israel               Industrial Phosphoric Acid from Israel: Final

                             Results of Countervailing Duty Administrative

                             Review, 63 FR 13626, 1362831 (March 20, 1998)

Spring Table Grapes           Initiation of Antidumping Duty Investigations:

                             Spring Table Grapes from Chile and Mexico, 66

                             FR 26831, 26832-33 (May 15, 2001)

Inland Steel Bar Co           Inland Steel Bar Co. v. United States, 155 F.3d

                             1370 (Fed.Cir. 1998).

Kajaria Iron Castings         Kajaria Iron Castings Pvt. Ltd. v. United

                             States, 156 F.3d 1163, 1174 (Fed. Cir. 1998)

LWS from the PRC              Laminated Woven Sacks From the People's

                             Republic of China: Final Affirmative

                             Countervailing Duty Determination and Final

                             Affirmative Determination, in Part, of Critical

                             Circumstances, 73 FR 35639, 35641 (June 24,

                             2008)

Washers from Korea            Large Residential Washers From the Republic of

                             Korea: Final Affirmative Countervailing Duty

                             Determination, 77 FR 75975 (December 26, 2012)

Marsan Gida Sanayi Ve Ticaret Marsan Gida Sanayi Ve Ticaret A.S. v. United

A.S.                          States, 931 F. Supp. 2d 1258, 1280 (CIT 2013)

Melamine From Trinidad and    Melamine From Trinidad and Tobago: Final

Tobago                        Affirmative Countervailing Duty Determination,

[*80 FR 68849*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5H9T-JTV0-006W-825B-00000-00&context=) (November 6, 2015)

Mitsubishi I                  Mitsubishi Electric Corporation v. United

                             States, 700 F. Supp. 538, 556 (CIT 1988)

Narrow Woven Ribbons from the Narrow Woven Ribbons with Woven Selvedge from

PRC                           the People's Republic of China: Preliminary

                             Determination of Sales at Less Than Fair Value

                             and Postponement of Final Determination, 75 FR

                             7244 (February 18, 2010),

Ribbons from the PRC          Narrow Woven Ribbons with Woven Selvedge from

                             the People's Republic of China: Final

                             Affirmative Countervailing Duty Determination,

*75 FR 41801* (July 19, 2010)

Lumber IVFinal Determination Notice of Final Affirmative Countervailing Duty

                             Determination and Final Negative Critical

                             Circumstances Determination: Certain Softwood

                             Lumber Products from Canada, *67 FR 15545* (April

                             2, 2002)

Low Enriched Uranium From     Notice of Final Affirmative Countervailing Duty

France                        Determination: Low Enriched Uranium From

                             France, 66 FR 65901 (December21, 2001)

Lumber IV Final AD            Notice of Final Determination of Sales at Less

Determination                 Than Fair Value: Certain Softwood Lumber

                             Products from Canada, [*67 FR 15539*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:45GT-WY70-006W-83XR-00000-00&context=) (April 2,

                             2002)

Washers from Mexico           Notice of Final Determination of Sales at Less

                             Than Fair Value: Large Residential Washers from

                             Mexico, 77 FR 76288 (December 27, 2012)

Narrow Woven Ribbons from     Notice of Final Determination of Sales at Less

Taiwan                        Than Fair Value: Narrow Woven Ribbons with

                             Woven Selvedge from Taiwan, [*75 FR 41804*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:50JY-MCN0-006W-80NH-00000-00&context=) (July

                             19, 2010)

Lumber IV AR Final            Notice of Final Results of Antidumping Duty

                             Administrative Review: Certain Softwood Lumber

                             Products from Canada, [*70 FR 73437*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4HS8-CCK0-006W-82S7-00000-00&context=) (December 12,

                             2005)

Final Results of 1st AR       Notice of Final Results of Countervailing Duty

                             Administrative Review and Rescission of Certain

                             Company-Specific Reviews: Certain Softwood

                             Lumber Products from Canada, [*69 FR 75917*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4F25-37R0-006W-83VN-00000-00&context=)

                             (December 20, 2004)

Final Results of 2nd AR       Notice of Final Results of Countervailing Duty

                             Administrative Review: Certain Softwood Lumber

                             Products from Canada, [*70 FR 73448*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4HS8-CCK0-006W-82SB-00000-00&context=) (December 12,

                             2005)

Lumber IV Prelim              Notice of Preliminary Affirmative

Determination                 Countervailing Duty Determination, Preliminary

                             Affirmative Critical Circumstances

                             Determination, and Alignment of Final

                             Countervailing Duty Determination with Final

                             Antidumping Duty Determination: Certain

                             Softwood Lumber Products from Canada, 66 FR

                             43186, 43187 (August 17, 2001)

Preliminary Results of 2nd AR Notice of Preliminary Results of Countervailing

                             Duty Administrative Review: Certain Softwood

                             Lumber Products from Canada, [*70 FR 33088*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:4GBK-R120-006W-81YD-00000-00&context=) (June

                             7, 2005)

Preliminary Results of 1st AR Notice of Preliminary Results of Countervailing

                             Duty Review: Certain Softwood Lumber from

                             Canada, 69 FR 33204, (June 14, 2004)

Oil Country Tubular Goods     Oil Country Tubular Goods From Argentina;

From Argentina                Preliminary Results of Countervailing Duty

                             Administrative Review, 62 FR32307 (June 13,

                             1997)

OCTG from the PRC             Oil Country Tubular Goods from the People's

                             Republic of China: Final Affirmative

                             Countervailing Duty Determination, Final

                             Negative Critical Circumstances Determination,

*74 FR 64045* (December 7, 2009)

Outboard Engines from Japan Outboard Engines from Japan, *70 FR 326* (January

                             4, 2005)

PAM, S.p.A.                   PAM, S.p.A. v. United States, 495 F. Supp. 2d

                             1360, 1369 (Ct. Int'l Trade 2007)

Lumber II                     Preliminary Affirmative Countervailing Duty

                             Determination: Certain Softwood Lumber Products

                             from Canada, *51 FR 37453* (October 22, 1986)

Laminated Hardwood Trailer    Preliminary Negative Countervailing Duty

Flooring from Canada          Determination: Certain Laminated Hardwood

                             Trailer Flooring ("LHF") from Canada, 61 FR

                             59079 (November 20, 1996)

CORE from Korea               Preliminary Results of Countervailing Duty

                             Administrative Review: Corrosion-Resistant

                             Carbon Steel Flat Products from the Republic of

                             Korea, 71 FR 53413 (September 11, 2006)

Policy Bulletin               Proposed Policies Regarding the Conduct of

                             Changed Circumstance Reviews of the

                             Countervailing Duty Order on Softwood Lumber

                             from Canada, *68 FR 37456* (June 24, 2003)

Lumber IV Remand              Remand Redetermination, Certain Softwood Lumber

                             Products from Canada, Final Affirmative

                             Countervailing Duty Determination, USA-CDA-

                             2002-1904-03 (January 12, 2004)

Royal Thai Government         Royal Thai Government v. United States, 341

                             F.Supp.2d 1315, 1318-1320 (U.S. Ct Int'l Trade,

                             2004), upheld by Royal Thai Government v.

                             United States, 436 F.3d 1330, 1336 (Fed. Cir.

                             2006)

Russ Berrie                   Russ Berrie & Co. v. United States, 57 F. Supp.

                             2d 1184 (Ct. Int'l Trade 1999)

RZBC Group                    RZBC Group Shareholding Co. v. United States,

[*100 F. Supp. 3d 1288 (CIT 2015)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5GNP-NFV1-F04B-W010-00000-00&context=)

Sandt Tech                    Sandt Tech., Ltd. v. Resco Metal & Plastics

                             Corp., 264 F.3d 1344, 1350-51 (Fed. Cir. 2001)

Shenzhen                      Shenzhen Xinboda Industries Co., Ltd. v. United

                             States, 976 F. Supp. 2d 1333 (CIT 2014)

Smith Corona                  Smith Corona Corp. v. United States, 796 F.

                             Supp. 1532 (CIT 1992)

Solar World Ams, Inc.         Solar World Ams, Inc. v. United States, 125 F.

                             Supp. 3d 1318 (CIT 2014)

ITC Preliminary Determination Softwood Lumber Products from Canada, Inv. Nos.

                             701-TA-566 and 731-TA-1342 (Preliminary)

                             Determinations and Views of the Commission,

                             USITC Publication No. 4463 (January 2017)

Springwater Cookie            Springwater Cookie & Confections, Inc. v.

                             United States, 20 C.I.T. 1192 (1996)

SAA                           Statement of Administrative Action accompanying

                             the Uruguay Round Agreements Act, H.R. Doc. No.

                             316, 103d Cong., 2d Session (1994)

Reinforcing Bar from Turkey Steel Concrete Reinforcing Bar From the

                             Republic of Turkey: Final Results and Partial

                             Rescission of Countervailing Duty

                             Administrative Review; 2014, [*82 FR 26907*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5NSB-1BB0-006W-81GF-00000-00&context=) (June

                             12, 2007)

SC Paper from Canada -        Supercalendered Paper from Canada: Final

Expedited Review              Results of Countervailing Duty Expedited Review

                             and accompanying Issues and Decision

                             Memorandum, 82 FR 18896 (April 24, 2017)

SC Paper from Canada          Supercalendered Paper from Canada: Final

                             Affirmative Countervailing Duty Determination,

                             80FR63535 (October 20, 2015)

SC Paper from Canada          Supercalendered Paper From Canada: Preliminary

Preliminary Determination     Affirmative Countervailing Duty Determination,

[*80 FR 45951*](https://advance.lexis.com/api/document?collection=administrative-codes&id=urn:contentItem:5GKH-TXJ0-006W-81YY-00000-00&context=) (August, 3,2015)

SC Paper from Canada -        Supercalendered Paper From Canada: Preliminary

Expedited Review -            Results of Countervailing Duty Expedited

Preliminary Results           Review, 81 FR85520 (November 28, 2016)

Timken Co.                    [*Timken Co. v. United States, 354 F.3d 1334,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4BGF-54H0-003B-928V-00000-00&context=)

                             1344 (Fed. Cir. 2004)).

TMKIPSCO                      TMK IPSCO v. United States, 179 F. Supp. 3d

                             1328, 1336 (CIT 2016)

Torrington                    [*Torrington v. United States, 745 F. Supp. 718,*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-1V30-003R-S05M-00000-00&context=)

                             721 (CIT 1990)

H. Rep. No. xx-xxx (1979)     Trade Agreements Act of 1979, House Report

                             Number xx-xxx (1979)

S. Rep. No. 96-249 (1979)     Trade Agreements Act of 1979, Senate Report

                             Number 96-249 (1979)

Trans web                     Trans web LLC v. 3MInnovative Props. Co.,

                             812F.3d 1295, 130102 (Fed. Cir. 2016)

Wind Towers from the PRC      Utility Scale Wind Towers from the People's

                             Republic of China: Preliminary Affirmative

                             Countervailing Duty Determination, *77 FR 33422*

                             (June 6, 2012).

Welded Line Pipe From the     Welded Line Pipe From the Republic of Korea:

Republic of Korea             Final Negative Countervailing Duty

                             Determination, 80FR61365 (October 13, 2015)

ASE-RELATED DOCUMENTS

This section is sorted by Date.

Date            Short Citation      Complete Document Title

November 25,    Petition            Letter from Petitioner, "Petitions for

2016                                the Imposition of Antidumping Duties and

                                   Countervailing Duties on Imports of

                                   Certain Softwood Lumber Products from

                                   Canada," dated November 25, 2016

November 25,    Stoner & Mercurio Petition at Exhibit 105, Economic

2016            Report              Analysis of Price Distortions in a

                                   Dominant-Firm/Fringe Market (January 4,

                                   2002)

November 30,    Petitioner Supp QNR Letter from the Department to Petitioner,

2016            1                   "Petitions for the Imposition of

                                   Antidumping Duties and Countervailing

                                   Duties on Imports of Certain Softwood

                                   Lumber Products From Canada: Supplemental

                                   Questions," dated November 30, 2016

December 1,     Petitioner Supp QNR Letter from Petitioner, "Supplement to

2016            1 Response          the Petitions for the Imposition of

                                   Countervailing Duties on Imports of

                                   Certain Softwood Lumber Products from

                                   Canada: Response to the Department's

                                   Supplemental Questions," dated December

                                   1,2016

December 2,     Petition Exhibits Letter from Petitioner to the Department,

2016            Correction          "Supplement to the Petition for the

                                   Imposition of Countervailing Duties on

                                   Imports of Certain Softwood Lumber

                                   Products from Canada: Correction of

                                   Production Errors," dated December 2,

                                   2016

December 2,     Petitioner Supp QNR Letter from the Department to Petitioner,

2016            2                   "Petition for the Imposition of

                                   Countervailing Duties on Imports of

                                   Certain Softwood Lumber from Canada:

                                   Supplemental Questions," dated December

                                   2,2016

December 5,     Lumber IV AR2       Second Administrative Review of the

2016            Calculations        Countervailing Duty Order on Certain

                                   Softwood Lumber Products from Canada:

                                   Final Results Calculations for the

                                   Province of British Columbia," dated

                                   December 5, 2005

December 5,     Petitioner Supp QNR Letter from Petitioner, "Petition for the

2016            2 Response          Imposition of Countervailing Duties on

                                   Imports of Certain Softwood Lumber

                                   Products from Canada: Response to

                                   Supplemental Questions," dated December

                                   5, 2016

December 7,     GOC Etal            Department Memorandum, "Countervailing

2016            Consultations       Duty Petition: Certain Softwood Lumber

               Memorandum          Products from Canada: Consultations with

                                   Officials from the Government of Canada,"

                                   dated December 7, 2016

December 8,     Petitioner Comments Letter from Petitioner, "Comments on

2016            - GOC Consultations Government of Canada's Consultations

                                   Paper," dated December 8, 2016.

December 15,    Initiation          Department Memorandum, "Countervailing

2016            Checklist           Duty Investigation Initiation Checklist:

                                   Certain Softwood Lumber Products from

                                   Canada," December 15,2016.

December 22,    CBP Query Results Department Memorandum, "Results of

2016                                Customs and Border Protection Query,"

                                   date December 22, 2016

December 29,    Can for Respondent Letter from Can for, "Certain Softwood

2016            Selection Comments Lumber from Canada, Case No. C-122858:

                                   Comments on CBP Data and Respondent

                                   Selection Methodology," dated December

                                   29, 2016

December 29,    Central Canada      Letter from the Central Canada Alliance,

2016            Alliance Comments - "Softwood Lumber from Canada: Comments on

               CBP Data            CBP Data," dated December 29, 2016

December 29,    Central Canada      Letter from Central Canada Alliance,

2016            Alliance Comments - "Softwood Lumber from Canada: Comments on

               Initiation          Subsidy Rate Methodology And CVD

                                   Respondent Selection," dated December 29,

                                   2016

December 29,    GNB Comments        Letter from the GNB, "Comments on

2016            Methodology         Methodology: Softwood Lumber from

                                   Canada," dated December 29, 2016

December 29,    GNS Comments        Letter from the GNS, "Softwood Lumber

2016            Methodology         from Canada: Comments Regarding the

                                   Appropriate Subsidy Rate Methodology for

                                   this Investigation," dated December 29,

                                   2016

December 29,    GOC Comments        Letter from the GOC, "Certain Softwood

2016            Initiation          Lumber Products from Canada: Comments on

                                   Appropriate Subsidy Rate Methodology and

                                   Selection of Respondents," dated December

                                   29, 2016

December 29,    GOO Comments Pre- Letter from the GOO, "Certain Softwood

2016            Prelim              Lumber Products from Canada: Comments on

                                   the Appropriate Subsidy Rate Methodology

                                   to Use in the Investigation," dated

                                   December29, 2016

December 29,    GOQ Comments        Letter from the GOQ, "Certain Softwood

2016            Initiation          Lumber from Canada: Comments of the

                                   Government of Quebec on Appropriate

                                   Subsidy Methodology and Respondent

                                   Selection," dated December 29, 2016

December 29,    JDIL Comments       Letter from JDIL, "Softwood Lumber from

2016            Respondent          Canada: Comments on Respondent

               Selection           Selection," dated December 29, 2016

December 29,    NBLP Comments       Letter from the NBLP, "Softwood Lumber

2016            Methodology         from Canada: New Brunswick Lumber

                                   Producers' Comments on Appropriate

                                   Subsidy Rate Methodology," dated December

                                   29, 2016

December 29,    Petitioner Comments Letter from Petitioner, "Certain Softwood

2016            - Methodology       Lumber from Canada: Comments on the

                                   Department's Subsidy Rate Methodology,"

                                   dated December 29, 2016

December 29,    Petitioner Comments Letter from Petitioner, "Certain Softwood

2016            - Respondent        Lumber from Canada: Comments on CBP Data

               Selection           and Respondent Selection," dated December

                                   29, 2016

December 29,    Tembec Comments CBP Letter from Tembec Inc., "Certain

2016            Data                Softwood Lumber Products from Canada:

                                   Comments on CBP Data," dated December 29,

                                   2016

December 30,    GOC Scope Comment Letter from the GOC, "Certain Softwood

2016            Extension Request Lumber from Canada: Request for Extension

                                   of Deadline to Submit Comments on Scope,"

                                   dated December 30, 2016

December 30,    Montana Lumber      Letter from Montana Lumber, "Certain

2016            Comments Scope      Softwood Lumber from Canada: Limit of

                                   Scope of Duties to New Wood," dated

                                   December 30, 2016

January 3, 2017 GOC Comments        Letter from the GOC, "Certain Softwood

               Respondent          Lumber Products from Canada: Rebuttal

               Selection           Comments on Appropriate Subsidy Rate

                                   Methodology and Selection of

                                   Respondents," dated January 3,2017

January 3, 2017 JDIL Rebuttal       Letter from JDIL, "Softwood Lumber from

               Comments Respondent Canada: Rebuttal Comments on Respondent

               Selection           Selection," dated January 3, 2017

January 4, 2017 IKEA Comments Scope Letter from IKEA, "Certain Softwood

                                   Lumber Products from Canada: Comments of

                                   Scope of Investigation," dated January 4,

                                   2017

January 4, 2017 Scope Comment       Department Memorandum, "Countervailing

               Deadline Extension Duty Investigation: Certain Softwood

                                   Lumber Products from Canada - Extension

                                   of Scope Comment Deadline," dated January

                                   4, 2017

January 9, 2017 Barrette Comments Letter from Barrette, "Softwood Lumber

               Scope 1             Products from Canada: Scope Comments -

                                   Bed-Frame Components," dated January 9,

                                   2017

January 9, 2017 Central Canada      Letter from the Central Canada Alliance

               Alliance Comments - and, "Softwood Lumber from Canada: OFIA

               Scope               and CIFQ's Scope Comments," dated January

                                   9, 2017

January 9, 2017 CIFQ Comments Scope Letter from CIFQ, "Softwood Lumber from

               1                   Canada: CIFQ's Scope Comments," dated

                                   January 9, 2017

January 9, 2017 GBC Comments Scope Letter from the GBC, "Certain Softwood

               1                   Lumber Products from Canada: Scope

                                   Comments of the Government ofBritish

                                   Columbia," dated January 9, 2017

January 9, 2017 GNS Comments Scope Letter from the GNS, "Softwood Lumber

               1                   from Canada: Scope Comments from the

                                   Government of Nova Scotia," dated January

                                   9, 2017

January 9, 2017 GOC Comments Scope Letter from the GOC, "Certain Softwood

               1                   Lumber Products from Canada: Comments on

                                   Product Coverage and Scope of the

                                   Investigations," dated January 9, 2017

January 9, 2017 JDIL Comments Scope Letter from JDIL, "Softwood Lumber from

               1                   Canada: Comments on Scope of the

                                   Investigation," dated January 9, 2017

January 9, 2017 NBLP Comments Scope Letter from the NBLP, "Certain Softwood

                                   Lumber from Canada: New Brunswick Lumber

                                   Producers Comments on Scope of the

                                   Investigation," dated January 9, 2017

January 9, 2017 OCFP Comments -     Letter from OCFP, "Independent comments

               Scope 1             to DOC Inv. Nos. A-122-857, C-122-858 and

                                   ITC Inv Nos, 701-TA-and 731- TA- ," dated

                                   January 9, 2017

January 9, 2017 Resolute Comments Letter from Resolute, "Softwood Lumber

               Scope 1             from Canada: Resolute's Scope Comments,"

                                   dated January 9, 2017

January 9, 2017 RILA Comments Scope Letter from RILA, "Certain Softwood

               1                   Lumber Products from Canada: RILA Scope

                                   Comments," dated January 9, 2017

January 9, 2017 Terminal Comments Letter from Terminal Forest Products

               Scope 1             Ltd., "Certain Softwood Lumber from

                                   Canada (A-122-857/C-122-858): Scope

                                   Comments," dated January 9, 2017

January 9, 2017 WFP Comments Scope Letter from Western Forest Products,

                                   "Softwood Lumber from Canada: Comments on

                                   Scope of the Investigation," dated

                                   January 9, 2016

January 10,     Canfor Comments     Letter from Canfor, "Certain Softwood

2017            Scope 1             Lumber Products from Canada, Case No. C-

                                   122-858: Comments on the Scope of the

                                   Investigation," dated January 10, 2017

January 10,     Memorandum OCFP     Department Memorandum to File, "Certain

2017            Comments            Softwood Lumber Products from Canada:

                                   Scope Exclusion Requests Received from

                                   Oregon-Canadian Forest Products," dated

                                   January 10, 2017

January 18,     Referenced          Department Memorandum, "Countervailing

2017            Respondent          Duty Investigation: Certain Softwood

               Selection Memoranda Lumber Products from Canada - Referenced

                                   Respondent Selection Memoranda," dated

                                   January 18, 2017

January 18,     Respondent          Department Memorandum, "Subsidy Rate

2017            Selection           Methodology and Respondent Selection,"

               Memorandum          dated January 18, 2017

January 18,     Revised CBP Data    Department Memorandum, "Revised CBP Data

2017                                and Company Rankings," dated January 18,

                                   2017

January 18,     Tolko Memorandum    Department Memorandum, "Countervailing

2017                                Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - Tolko

                                   Marketing & Sales Ltd.," dated January

                                   18, 2017

January 19,     CIFQ Rebuttal       Letter from CIFQ, "Softwood Lumber from

2017            Comments Scope      Canada: CIFQ's Rebuttal Scope Comments,"

                                   dated January 19, 2017

January 19,     IKEA Rebuttal       Letter from IKEA, "Certain Softwood

2017            Comments Scope      Lumber Products from Canada: IKEA

                                   Rebuttal Comments," dated January 19,

                                   2017

January 19,     Petitioner Rebuttal Letter from Petitioner, "Certain Softwood

2017            Comments - Scope    Lumber Products from Canada: Response to

                                   Comments on Scope," dated January 19,

                                   2017

January 19,     Primary QNR         Letter from Department to the GOC (and

2017                                the mandatory respondents),

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Countervailing Duty

                                   Questionnaire," dated January 19, 2017

January 25,     JDIL Request        Letter from JDIL, "Softwood Lumber from

2017            Voluntary Treatment Canada: Request for Voluntary Respondent

                                   Treatment," dated January 25, 2017

January 26,     Petitioner Request Letter from Petitioner, "Certain Softwood

2017            Postponement        Lumber Products from Canada: Request for

                                   Extension of the Preliminary

                                   Determination," dated January 26, 2017

January 27,     GOC Etal Ex-Parte Department Memorandum, "Countervailing

2017            Meeting Primary QNR Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Ex-Parte

                                   Meeting," dated January 27, 2017

January 27,     GOC Etal Primary    Letter from the GOC, "Certain Softwood

2017            QNR Clarification 1 Lumber from Canada: Submission of

                                   Memorandum Regarding Preliminary Issues

                                   Identified in the CVD Initial

                                   Questionnaire," dated January 27, 2017

January 27,     Tolko QNR           Department Memorandum, "Countervailing

2017            Distribution        Duty Investigation of Certain Softwood

               Memorandum          Lumber Products from Canada: Tolko

                                   Marketing & Sales Ltd," dated January 27,                                    2017.

January 31,     Canfor QNR          Letter from Canfor, "Certain Softwood

2017            Clarification       Lumber Products from Canada, Case No. C-

               Request 1           122-858: Letter Requesting Exclusion from

                                   Reporting Requirement," dated January 31,

                                   2017

January 31,     GOC Etal Pimary QNR Letter from the Department to the GOC,

2017            Response Addendum "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Addendum to CVD Initial

                                   Questionnaire," dated January 31,2017

January 31,     Request for Monthly Department Letter,

2017            Q&V                 "Antidumping/Countervailing Duty

                                   Investigations of Certain Softwood Lumber

                                   Products from Canada: Request for Monthly

                                   Quantity and Value Shipment Data," dated

                                   January 31, 2017

February 2,     GOC Etal Comments Letter from the GOC, "Certain Softwood

2017            NSA 1               Lumber from Canada: Response to

                                   Petitioner's Additional Subsidy

                                   Allegations," dated February 2, 2017

February 2,     GOC Etal Primary    Letter from the GOC, "Preliminary Issues

2017            QNR Clarification 2 Identified by Canadian Governmental

                                   Parties with the Department's Initial

                                   Questionnaire in Lumber," dated February

                                   2, 2017

February 2,     JDIL Affiliation    Letter from JDIL, "Softwood Lumber from

2017            Response            Canada," dated February 2, 2017

February 2,     Resolute            Letter from Resolute, "Softwood Lumber

2017            Affiliation         from Canada: Resolute's Response to

               Response            Affiliated Companies Questionnaire,"

                                   dated February 2, 2017

February 2,     Tolko Comments QNR Letter from Tolko, "Certain Softwood

2017            Clarification       Lumber Products from Canada: Exclusion

               Request 1           Request," dated February 2, 2017

February 2,     West Fraser         Letter from West Fraser, "Certain

2017            Comments QNR        Softwood Lumber Products from Canada,

               Clarification       Case No. C-122-858: Letter Notrfying of

               Request             Reporting Difficulties," dated February

                                   2, 2017

February 3,     Canfor Ex-Parte     Department Memorandum, "Ex Parte Meeting

2017            Meeting 1           with Representatives of Canfor Corp, West

                                   Fraser Mills Ltd., and Tolko Marketing

                                   and Sales Ltd.," dated February 3, 2017

February 3,     GOC Etal Primary    Letter from the Department to the GOC,

2017            QNR Clarification 3 "Certain Softwood Lumber from Canada:

                                   Addressing Preliminary Issues Identified

                                   in the CVD Initial Questionnaire," dated

                                   February 3, 2017

February 6,     GOC Etal Primary    Letter from the Department to the GOC,

2017            QNR Clarification 4 "Certain Softwood Lumber from Canada:

                                   Addressing Preliminary Issues Identified

                                   in the CVD Initial Questionnaire," dated

                                   February 6, 2017

February 6,     GOC Etal Primary    Department Memorandum, "Countervailing

2017            QNR Clarification 5 Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Telephone

                                   Conversation with Counsel to Government

                                   of Canada," dated February 6, 2017

February 6,     Petitioner Comments Letter from Petitioner, "Certain Softwood

2017            - Tolko Exclusions Lumber Products from Canada: Partial

                                   Opposition to Tolko Request to Limit

                                   Reporting," dated February 6, 2017

February 6,     Plant Tour          Department Memorandum, "Antidumping and

2017            Memorandum          Countervailing Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Visit to Rex Lumber Company,"

                                   dated February 6, 2017

February 7,     West Fraser         Letter from West Fraser, "Certain

2017            Affiliation         Softwood Lumber Products from Canada,

               Response            Case No. C-122-858: Response to Section

                                   III, Questions C.l and C.2," dated

                                   February 7, 2017

February 8,     Canfor Affiliation Letter from Canfor, "Certain Softwood

2017            Response            Lumber Products from Canada, Case No. C-

                                   122-858: Response to Request for

                                   Additional Sales Data," dated February 8,

                                   2017

February 8,     Canfor QNR          Letter from the Department to Canfor,

2017            Clarification       "Countervailing Duty Investigation of

               Request 2           Certain Softwood Lumber Products from

                                   Canada," dated February 8, 2017

February 8,     GOC Etal Primary    Letter from the GOC, "Issues Identified

2017            QNR Clarification 6 by Canadian Governmental Parties with the

                                   Department's January 31, 2017

                                   Questionnaire," dated February 8, 2017

February 8,     Petitioner Comments Letter from Petitioner, "Certain Softwood

2017            - Resolute          Lumber Products from Canada: Comments on

               Affiliation         Resolute's Affiliated Companies

                                   Questionnaire Response," dated February

                                   8, 2017

February 8,     Tolko Affiliation Letterfrom Tolko, "Certain Softwood

2017            Response            Lumber Products from Canada: Affiliated

                                   Party Submission," dated February 8, 2017

February 8,     Tolko Comments QNR Letter from Tolko, "Certain Softwood

2017            Clarification       Lumber Products from Canada: Further

               Request 2           Comments on Reporting Exclusion Request,"

                                   dated February 8, 2017

February 8,     West Fraser QNR     Letter from the Department to West

2017            Clarification 1     Fraser, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada," dated February 8,

                                   2017

February 9,     Resolute Supp QNR 1 Letter from the Department to Resolute,

2017                                "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Affiliated Companies

                                   Questionnaire Response of Resolute FP

                                   Canada Inc.," dated February 9, 2017

February 9,     West Fraser Supp    Letter from the Department to West

2017            QNR 1               Fraser, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada," dated February 9,

                                   2017

February 10,    GOC Etal Primary    Department Memorandum, "Countervailing

2017            QNR Clarification 8 Duty Investigation on Certain Softwood

                                   Lumber Products from Canada: Telephone

                                   Conversation with Counsel for Manitoba

                                   and Saskatchewan," dated February 10,

                                   2017

February 10,    GOC Etal Primary    Department Memorandum, "Countervailing

2017            QNR Clarification 7 Duty Investigation of Certain Softwood

                                   Lumber Products from Canada," dated

                                   February 10, 2017

February 10,    Petitioner Comments Letter from Petitioner, "Certain Softwood

2017            Tolko Affiliation Lumber Products from Canada: Comments on

                                   Tolko's Affiliated Companies

                                   Questionnaire Response," dated February

                                   10, 2017

February 10,    Petitioner West     Letter from Petitioner, "Certain Softwood

2017            Fraser Comments     Lumber Products from Canada: Comments on

                                   West Fraser's Affiliated Companies

                                   Questionnaire Response," dated February

                                   10, 2017

February 13,    Petitioner Comments Letter from Petitioner, "Certain Softwood

2017            on Canfor QNR       Lumber Products from Canada: Comments on

               Response 1          Canfor's Affiliated Companies

                                   Questionnaire Response," dated February

                                   13, 2017

February 13,    Tolko Comments QNR Letter from Tolko, "Certain Softwood

2017            Clarification       Lumber Products from Canada: Further

               Request 3           Comments on Reporting Exclusion Request,"

                                   dated February 13, 2017

February 13,    West Fraser Supp    Letter from West Fraser, "Certain

2017            QNR 1 Response      Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Response to

                                   Department's February 9, 2017 Affiliation

                                   Supplemental Questionnaire," dated

                                   February 13, 2017

February 15,    GOC Etal Ex-Parte Department Memorandum, "Countervailing

2017            Meeting Provincial Duty Investigation of Certain Softwood

               Exclusion           Lumber Products from Canada: Ex-Parte

                                   Meeting," dated February 15, 2017

February 15,    GOC Etal Ex-Parte Department Memorandum, "Countervailing

2017            Meeting Company     Duty Investigation of Certain Softwood

               Exclusions I        Lumber Products from Canada: Ex-Parte

                                   Meeting with Counsel to the Government of

                                   Canada," dated February 15, 2017

February 15,    Resolute Supp QNR 1 Letter from Resolute, "Softwood Lumber

2017            Response            from Canada: Resolute's Response to

                                   Affiliation Supplemental Questionnaire"

                                   dated February 15, 2017

February 17,    GOC Etal Primary    Department Memorandum, "Countervailing

2017            QNR Correction I    Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Initial

                                   Questionnaire - Section III Loan

                                   Benchmark and Loan Guarantee Appendix,"

                                   dated February 27, 2017

February 17,    Resolute Supp QNR 2 Letter from the Department to Resolute,

2017                                "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Second Supplemental Questionnaire

                                   on Affiliated Companies of Resolute FP

                                   Canada Inc.," dated February 17, 2017

February 21,    Resolute Supp QNR 2 Letter from Resolute, "Softwood Lumber

2017            Response            from Canada: Resolute's Response to

                                   Second Supplemental Affiliation

                                   Questionnaire," February 21, 2017

February 21,    Resolute Supp QNR 3 Letter from the Department to Resolute,

2017                                "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Third Supplemental Questionnaire

                                   on Affiliated Companies of Resolute FP

                                   Canada Inc.," dated February 21,2017

February 22,    Canfor Shipment     Letter from Canfor, "Certain Softwood

2017            Data 1              Lumber Products from Canada. Case No. C-

                                   122-858: Quantity and Value Shipment Data

                                   for January 2015 - January 2017," dated

                                   February 22, 2017

February 22,    Canfor Supp QNR 1 Letter from the Department to Canfor,

2017                                "Certain Softwood Lumber Products from

                                   Canada, Case No. C-122-858: Affiliated

                                   Companies Section Questionnaire

                                   Response," dated February 22, 2017.

February 22,    JDIL Shipment Datal Letter from JDIL, "Certain Softwood

2017                                Lumber Products from Canada," dated

                                   February 22, 2017

February 22,    Resolute Shipment Letter from Resolute, "Softwood Lumber

2017            Datal               from Canada: Resolute's Response to

                                   Critical Circumstances Questionnaire,"

                                   dated February 22, 2017

February 22,    Tolko Shipment      Letter from Tolko, "Certain Softwood

2017            Datal               Lumber Products from Canada: Response to

                                   Department's Request for Monthly Sales

                                   Data," dated February 22, 2017

February 22,    West Fraser         Letter from West Fraser, "Certain

2017            Shipment Datal      Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Response to the

                                   Department's Request for Monthly Quantity

                                   and Value Shipment Data," dated February

                                   22, 2017

February 23,    OCFP Rebuttal       Letter from OCFP, "Oregon-Canadian Forest

2017            Comments - Scope    Products Response to Coalition letter on

                                   Scope Exemption Requests January 19,

                                   2017," dated February 23, 2017

February 23,    Petitioner Ex-Parte Department Memorandum, "Countervailing

2017            Meeting 1           Duty Investigation: Certain Softwood

                                   Lumber Products from Canada: Ex-Parte

                                   Meeting with Counsel to Petitioners,"

                                   dated February 23, 2017

February 23,    Resolute            Department Memorandum, "Countervailing

2017            Affiliation         Duty Investigation of Certain Softwood

               Memorandum          Lumber Products from Canada," dated

                                   February 23, 2017

February 23,    West Fraser QNR     Department Memorandum, "Countervailing

2017            Clarification 2     Duty Investigation of Certain Softwood

                                   Lumber Products from Canada," dated

                                   February 23, 2017

February 24,    GOC Etal Comments Letterfrom the GOC, "Countervailing Duty

2017            Critical            and Antidumping Duty Investigations of

               Circumstances       Certain Softwood Lumber Products from

                                   Canada: Comments on Allegations of

                                   Critical Circumstances," dated February

                                   24, 2017

March 2, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               Critical            Lumber Products from Canada: Response to

               Circumstances 2     Government of Canada's Comments on

                                   Allegations of Critical Circumstances,"

                                   dated March 2, 2017

March 6, 2017 GBC Comments        Letter from the GBC, "Certain Softwood

               Company Exclusions Lumber Products from Canada: Ex-Parte

                                   Meeting - Company Exclusions II," dated

                                   March 6, 2017

March 7, 2017 GOC Etal Primary    Department Letter, "Standard Questions

               QNR Clarification 9 Appendix," dated March 7, 2017

March 7, 2017 Primary QNR -       Department Memorandum, "Countervailing

               Correction 1        Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Standard

                                   Questionnaire Appendix," dated March 7,

                                   2017

March 8, 2017 Canfor Supp QNR 1 Letter from Canfor, "Certain Softwood

               Response            Lumber from Canada, Case No. C-122858:

                                   Affiliated Companies Section

                                   Questionnaire Response," dated March 8,

                                   2017

March 8, 2017 GOC Etal Primary    Department Memorandum, "Standard

               QNR Clarification Questions Appendix - Provision of

               10                  Stumpage for LTAR," dated March 7, 2017

March 8, 2017 Resolute Supp QNR 3 Letter from Resolute, "Softwood Lumber

               Response            from Canada: Resolute's Response to Third

                                   Supplemental Affiliation Questionnaire,"

                                   dated February 21, 2017

March 9, 2017 GOC Comments        Letter from the GOC, "Countervailing Duty

               Critical            and Antidumping Duty Investigations of

               Circumstances       Certain Softwood Lumber Products from

               Rebuttal            Canada: Rebuttal Comments on Allegations

                                   of Critical Circumstances," dated March

                                   9, 2017

March 13, 2017 Canfor Primary QNR Letter from Canfor, "Certain Softwood

               Response, Part 1    Lumber Products from Canada, Case No. C-

                                   122-858: Initial Questionnaire Response,"

                                   dated March 13, 2017

March 13, 2017 JDIL Primary QNR    Letter from JDIL, "Certain Softwood

               Response            Lumber Products from Canada: Response to

                                   Section III of the Questionnaire for

                                   Producers/Exporters," dated March 13,

                                   2017

March 13, 2017 Tolko Primary QNR Letter from Tolko, "Certain Softwood

               Response            Lumber Products from Canada: Response to

                                   Section III of the Department's CVD

                                   Questionnaire," dated March 13, 2017

March 13, 2017 West Fraser Primary Letter from West Fraser, "Certain

               QNR Response, Part Softwood Lumber Products from Canada,

               1                   Case No. C-122-858: Response to

                                   Department's January 19, 2017

                                   Countervailing Duty Questionnaire," dated

                                   March 14, 2017

March 14, 2017 GBC Primary QNR     Letter from GBC, "Response Of The

               Response Part 1     Government Of British Columbia To The

                                   Department's January 19, 2017 Initial

                                   Questionnaire," dated March 14, 2017

March 15, 2017 Canfor Shipment     Letter from Canfor, "Certain Softwood

               Data 2              Lumber Products from Canada, Case No. C-

                                   122-858: Quantity and Value Shipment Data

                                   for January 2015 - February 2017," dated

                                   March 15,2017

March 15, 2017 GOA Primary QNR     Letter from GOA, "Certain Softwood Lumber

               Response            Products from Canada: Response of the

                                   Government of Alberta to the Department's

                                   Standard Questions Appendix for

                                   Stumpage," dated March 16, 2017

March 15, 2017 GOC Etal Primary    Letter from the GOC, "Certain Softwood

               QNR Response        Lumber from Canada: Response of the

                                   Government of Canada and the Governments

                                   of Alberta, British Columbia, Manitoba,

                                   Ontario, Quebec, and Saskatchewan to the

                                   Department's January 19, 2017 Initial

                                   Questionnaire and January 31,2017

                                   Addendum to CVD Initial Questionnaire,"

                                   dated March 15, 2017

March 15, 2017 GOO Primary QNR     Letter from the GOO, "Response fo the

               Response            Government of Ontario to U.S. Department

                                   of Commerce January 19, 2017

                                   Questionnaire and January 31, 2017

                                   Addendum," dated March 15,2017

March 15, 2017 JDIL Shipment Data2 Letter from JDIL, "Certain Softwood

                                   Lumber Products from Canada," dated March

                                   15, 2017

March 15, 2017 Petitioner NSA 1    Letter from Petitioner, "Certain Softwood

                                   Lumber Products from Canada: Additional

                                   Subsidy Allegations," dated March 15,2017

March 15, 2017 Resolute Primary    Letter from Resolute, Part I for Non-

               QNR, Part 1         Stumpage programs, "Softwood Lumber from

                                   Canada: Resolute's Response to Section

                                   111 of Initial Questionnaire on General

                                   Issues and Non-Stumpage Programs," dated

                                   March 15, 2017

March 15, 2017 Resolute Primary    Letter from Resolute, Part II for

               QNR, Part 2         Stumpage programs, "Softwood Lumber from

                                   Canada: Resolute's Response to Section

                                   III of Initial Questionnaire on Stumpage

                                   Programs," dated March 15, 2017

March 15, 2017 Resolute Shipment Letter from Resolute, "Softwood Lumber

               Data2               from Canada: Resolute's Updated Response

                                   to Critical Circumstances Questionnaire,"

                                   dated March 15, 2017

March 15, 2017 Tolko Shipment      Letter from Tolko, "Certain Softwood

               Data2               Lumber Products from Canada: Response to

                                   Department's Request for Monthly Sales

                                   Data, Inclusive of February 2017," dated

                                   March 15,2017

March 15, 2017 West Fraser         Letter from West Fraser, "Certain

               Shipment Data2      Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Response to the

                                   Department's Request for Monthly Quantity

                                   and Value Shipment Data," dated March

                                   15,2017

March 16, 2017 Canfor Primary QNR Letter from Canfor, "Certain Softwood

               Response, Part 2    Lumber Products from Canada, Case No. C-

                                   122-858: Response to Standard Questions

                                   Appendix for Stumpage," dated March 16,

                                   2017

March 16, 2017 GOO Primary QNR     Letter from the GOO, "Countervailing Duty

               Response Addendum Investigation of Certain Softwood Lumber

                                   Products from Canada: Response to the

                                   Standard Questionnaire Appendix for

                                   Ontario provincial stumpage," dated March

                                   16, 2017

March 16, 2017 GOQ Primary QNR     Letter from GOQ, "Certain Softwood Lumber

               Response            from Canada: Response of the Government

                                   of Quebec to the Standard Questions

                                   Appendix Relating to Stumpage," dated

                                   March 16, 2017

March 16, 2017 West Fraser Primary Letter from West Fraser, "Certain

               QNR Response, Part Softwood Lumber Products from Canada,

               2                   Case No. C-122-858: Response to

                                   Department's March 7, 2017 Request to

                                   Submit a Response to the Standard

                                   Questions Appendix as It Pertains to

                                   Provincial Stumpage Programs," dated

                                   March 16, 2017

March 17, 2017 GNB Primary QNR     Letter from GNB, "Questionnaire Response

               Response            of the Government of the Province of New

                                   Brunswick Certain Softwood Lumber

                                   Products from Canada," dated March 17,

                                   2017

March 17, 2017 GNS Primary QNR     Letter from the GNS, "Certain Softwood

               Response            Lumber Products from Canada: Response of

                                   the Government of Nova Scotia to the

                                   Department's Questionnaire Addendum for

                                   the Provincial Governments," dated March

                                   17, 2017

March 17, 2017 GNS QNR             Letter from GNS, "Certain Softwood Lumber

               Clarification       Products from Canada: Letter from the

               Request 1           Government of Nova Scotia Addressing the

                                   Department's Questionnaire Regarding

                                   "Other Assistance," dated March 17, 2017

March 20, 2017 GBC Primary QNR     Letter from GBC, "Certain Softwood Lumber

               Response Part 2     Products from Canada: Response to

                                   Standard Questionnaire Appendix for

                                   British Columbia Stumpage," dated March

                                   20, 2017

March 21, 2017 Ex-Parte Meeting    Department Memorandum, "Countervailing

               Exclusions          Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Ex-Parte

                                   Meeting," dated March 21,2017

March 21, 2017 GNS Supp QNR 1      Letter from the Department to the GNS,

                                   "Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada:

                                   Supplemental Questionnaire," dated March

                                   21,2017

March 22, 2017 Resolute Supp QNR 4 Letter from the Department to Resolute,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Non-Stumpage Programs - First

                                   Supplemental Questionnaire for Resolute

                                   FP Canada Inc.," dated March 22, 2017

March 24, 2017 Resolute Supp QNR 5 Letter from the Department to Resolute,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Non-Stumpage Programs -Second

                                   Supplemental Questionnaire for Resolute

                                   FP Canada Inc.," dated March 24, 2017

March 27, 2017 BCLTC NFI           Letter from BCTLC, "Certain Softwood

               Submission          Lumber Products from Canada: Submission

                                   of Factual Evidence Potentially Relevant

                                   to Measurement of Adequacy of

                                   Remuneration," dated March 27, 2017

March 27, 2017 Canfor NFI          Letter from Canfor, "Certain Softwood

               Submission 1        Lumber Products from Canada, Case No. C-

                                   122-858: Benchmark Factual Information

                                   Submission," dated March 27, 2017

March 27, 2017 GBC NFI Submission Letter from the GBC, "Certain Softwood

               1                   Lumber Products from Canada: Government

                                   of British Columbia Benchmark

                                   Information," dated March 27, 2017

March 27, 2017 GBC Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017March 27, 2017 GNS Supp QNR 2      Letter from the Department, "Letter to

                                   the Government of Canada, "Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017.

March 27, 2017 GOA NFI Submission Letter from the GOA, "Certain Softwood

               1, Part 1           Lumber Products from Canada: Submission

                                   of Factual Information to Measure

                                   Adequacy of Remuneration Pursuant to 19

                                   C.F.R. 351.301(c)(3)(i)," dated March 27,

                                   2017

March 27, 2017 GOA NFI Submission Letter from the GOA, "Certain Softwood

               1, Part 2           Lumber Products from Canada: Submission

                                   of Factual Information Regarding Log

                                   Seller Profit," dated March 27, 2017

March 27, 2017 GOA Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 GOC Etal Comments Letter from GOC Etal, "Certain Softwood

               NSA 2               Lumber from Canada: Response to

                                   Petitioner's Additional Subsidy

                                   Allegations," dated March 27, 2017

March 27, 2017 GOC Etal Primary    Letter from the GOC et. al., "Certain

               QNR Response,       Softwood Lumber from Canada: Errata to

               Errata 1            the Response of the Government of Canada

                                   and the Governments of Alberta, British

                                   Columbia, and Ontario to the Department's

                                   January 19, 2017 Initial Questionnaire,"

                                   dated March 27, 2017

March 27, 2017 GOC Etal Supp QNR 1 Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 GOM Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 GOO NFI Submission Letter from the GOO, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada: factual information

                                   concerning the adequacy of remuneration,"

                                   dated March 27, 2017

March 27, 2017 GOO Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 GOQ NFI Submission Letter from the GOQ, "Certain Softwood

                                   Lumber from Canada: Submission of Factual

                                   Information by the Government of Quebec,"

                                   dated March 27, 2017

March 27, 2017 GOQ Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 GOS Comments GNS    Letter from the GOS, "Softwood Lumber

               Response            from Canada - Comments on the Government

                                   of Nova Scotia's March 17, 2017

                                 Questionnaire Response," dated March 27,

                                   2017

March 27, 2017 GOS Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Government of

                                   Canada and the Governments of Alberta,

                                   British Columbia, Manitoba, Ontario,

                                   Quebec, and Saskatchewan," dated March

                                   27, 2017

March 27, 2017 JDIL NFI Submission Letter from JDIL, "Certain Softwood

               1                   Lumber Products from Canada: Submission

                                   of Factual Information under 19 CFR

                                   351.102(b)(21)(v) & 351.301(c)(5)," dated

                                   March 27, 2017

March 27, 2017 JDIL NFI Submission Letter from JDIL, "Certain Softwood

               2                   Lumber Products from Canada: Submission

                                   of Factual Information to Measure the

                                   Adequacy of Remuneration," dated March

                                   27, 2017

March 27, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               - Primary QNR       Lumber Products from Canada: Comments on

               Responses           Initial Questionnaire Responses," dated

                                   March 27, 2017

March 27, 2017 Petitionner NFI     Letter from Petitioner, "Certain Softwood

               Submission 1        Lumber Products from Canada: Benchmark

                                   Information," dated March 27, 2017

March 27, 2017 Resolute Comments Letter from Resolute, "Softwood Lumber

               NSA                 From Canada: Resolute's Response To The

                                   COALITION'S Additional Subsidy

                                   Allegations," dated March 27, 2017

March 27, 2017 Resolute NFI        Letter from Resolute, "Countervailing

               Submission          Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: New Factual

                                   Information," dated March 27, 2017

March 27, 2017 Tolko NFI           Letter from Tolko, "Certain Softwood

               Submission          Lumber Products from Canada: Benchmark

                                   Factual Information Submission," dated

                                   March 27, 2017

March 27, 2017 West Fraser NFI     Letter from West Fraser, "Certain

               Submission          Softwood Lumber Products from Canada,

                                   Case No.C-122-858: Submission of

                                   Additional Factual Information to Measure

                                   the Adequacy of Remuneration and

                                   Technical Correction to Response to

                                   Department's January 19, 2017

                                   Countervailing Duty Questionnaire," dated

                                   March 27, 2017

March 28, 2017 GNB NFI Submission Letter from the GNB, "Government of New

               1                   Brunswick's Submission of Factual

                                   Information Concerning the Adequacy of

                                   Remuneration Under 19 CFR 351.511(a)(2)

                                   and other Factual Information," dated

                                   March 28, 2017

March 28, 2017 GOC Etal Primary    Letter from the GOC et. al.,

               QNR Response,       "Countervailing Duty Investigation of

               Errata 2            Certain Softwood Lumber Products from

                                   Canada: Correction to the Public Version

                                   of Part 7 of Volume VI of the Government

                                   of Canada's Response to the Department's

                                   January 19.2017 Initial Questionnaire,"

                                   dated March 28, 2017

March 28, 2017 Scope Language      Department Memorandum, "Countervailing

               Request             and Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language," dated

                                   March 28, 2017

March 29, 2017 GOC Comments        Letter from the GOC, "Proposal for

               Company Exclusions Company Exclusions," dated March 29, 2017

March 29, 2017 GOC Etal Comments Letter from the GOC Etal, "Proposal for

               Exclusions          Company Exclusions," dated March 29 2017

March 30, 2017 Canfor Supp QNR 2 Letter from the Department to Canfor,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire for Canfor,"

                                   dated March 30, 2017

March 30, 2017 GBC Supp QNR 2      Letter from the Department to the GBC,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products From

                                   Canada: Stumpage Programs," dated March

                                   30, 2017

March 30, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               - Company           Lumber Products from Canada: Response to

               Exclusions          Government of Canada's Proposal for

                                   Company Exclusions," dated March 30, 2017

March 30, 2017 Resolute Supp QNR 6 Letter from the Department to Resolute,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Stumpage Programs -[Stumpage

                                   Programs -] First Supplemental

                                   Questionnaire for Resolute FP Canada

                                   Inc.," dated March 30, 2017

March 30, 2017 Tolko Supp QNR 1    Letter from the Department to Tolko,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire for Tolko,"

                                   dated March 30, 2017

March 31, 2017 Ex-Parte Meeting BC Department Memorandum, "Countervailing

               Stumpage            Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Ex-Parte

                                   Meeting," dated March 31,2017

March 31, 2017 GNB Comments        Letter from the GNB, "Softwood Lumber

               Exclusions 1        from Canada: Proposals for Product- or

                                   Company-Based Exclusions from the CVD

                                   Investigation," dated March 31, 2017

March 31, 2017 GOC Etal Comments Letter from GOC Etal, "Countervailing

               GNS Data 1          Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Comments

                                   from the Governments of Alberta, British

                                   Columbia, Manitoba, Ontario and Quebec on

                                   the Government of Nova Scotia's Initial

                                   Questionnaire Response," dated March 31,

                                   2017

March 31, 2017 Terminal Comments Letter from Terminal, "Certain Softwood

               Scope 2             Lumber from Canada (A-122-857/C-122-858):

                                   Rebuttal Scope Comments," dated March

                                   31,2017

April 3, 2017 Barrette Comments Letter from Barrette, "Softwood Lumber

               Scope 2             from Canada: Proposed Scope Language for

                                   Bed-Frame Components," dated April 3,2017

April 3, 2017 Canfor Comments     Letter from Canfor, "Certain Softwood

               Scope 2             Lumber Products from Canada. Case No. C-

                                   122-858: Proposed Scope Language I-

                                   Joists," dated April 3,2017

April 3, 2017 Canfor Rebuttal NFI Letter from Canfor, "Certain Softwood

               Submission 1        Lumber Products from Canada, Case No. C-

                                   122-858: Rebuttal Factual Information,"

                                   dated April 3, 2017

April 3, 2017 CIFQ Comments Scope Letter from CIFQ, "Softwood Lumber from

               2                   Canada: Proposed Scope Language - I-

                                   Joists," dated April 3, 2017

April 3, 2017 CIFQ Comments Scope Letter from CIFQ, "Softwood Lumber from

               3                   Canada: Proposed Scope Language -

                                   Maibec," dated April 3, 2017

April 3, 2017 GBC Comments Scope Letter from the GBC, "Certain Softwood

               2                   Lumber Products from Canada: Comments in

                                   Support of Clarifying and Exclusionary

                                   Language Proposed by Canada Regarding the

                                   Scope of these Investigations," dated

                                   April 3, 2017

April 3, 2017 GNS Supp QNR 1      Letter from the GNS, "Certain Softwood

               Response            Lumber Products from Canada: Response of

                                   the Government of Nova Scotia to the

                                   Department's Supplemental Questionnaire,"

                                   dated April 3, 2017

April 3, 2017 GOC Comments Scope Letter from the GOC, "Certain Softwood

               2                   Lumber Products from Canada: Clarifying

                                   or Exclusionary Language Regarding the

                                   Scope of the fnvestigations," dated April

                                   3,2017

April 3, 2017 GOC Etal Supp QNR 2 Letter from the Department to the GOC,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire for the

                                   Government of Canada and the Governments

                                   of Alberta, British Columbia, Manitoba,

                                   Ontario, Quebec, and Saskatchewan," dated

                                   April 3,2017

April 3, 2017 JDIL Comments Scope Letter from JDIL, "Softwood Lumber from

               2                   Canada: Proposed Scope Language," dated

                                   April 3, 2017

April 3, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               Scope               Lumber Products from Canada: Additional

                                   Comments on Scope," dated April 3, 2017

April 3, 2017 Petitioner Scope    Letter from Petitioner, "Certain Softwood

               Comments 1          Lumber Products from Canada: Additional

                                   Comments on Scope," dated April 3, 2017

April 3, 2017 Resolute Comments Letter from Resolute, "Softwood Lumber

               Scope 2             from Canada: Proposed Scope Language -

                                   Bedframe Components," dated April 3, 2017

April 3, 2017 Resolute Supp QNR 4 Letter from Resolute, "Softwood Lumber

               Response            from Canada: Resolute's Response to the

                                   First Supplemental Questionnaire on Non-

                                   Stumpage Programs," dated April 3, 2017

April 3, 2017 Resolute Supp QNR 7 Letter from the Department to Resolute,

                                   "Non-Stumpage Programs - Addendum to

                                   Second Supplemental Questionnaire for

                                   Resolute FP Canada Inc.," dated April 3,

                                   2017

April 3, 2017 RILA Comments Scope Letter from RILA, "Certain Softwood

               2                   Lumber Products from Canada: RILA Scope

                                   Comments," dated April 3, 2017

April 3, 2017 Tolko Rebuttal      Letter from Tolko, "Certain Softwood

               Comments Scope      Lumber Products from Canada: Response to

                                   Petitioner Comments Submitted on March

                                   27, 2017," dated April 3, 2017"

April 3, 2017 UFP Comments Scope Letter from UFP, "Certain Softwood Lumber

               1                   Products from Canada: Proposed Clarifying

                                   Scope Language Submitted by UFP Western

                                   Division, Inc. and UFP Eastern Division,

                                   Inc. (A-122-857 C-122858)," dated April

                                   3, 2017

April 3, 2017 West-Wood Comments Letter from West-Wood, "Certain Softwood

               Scope               Lumber from Canada: West Wood Industries

                                   Ltd.," dated April 3, 2017

April 3, 2017 Woodtone Comments Letter from Woodtone, "Certain Softwood

               Scope               Lumber from Canada (A-122-857/C-122-858):

                                   Rebuttal Scope Comments," dated April 3,

                                   2017

April 4, 2017 Canfor Supp QNR 3 Letter from the Department to Canfor,

                                   "Certain Softwood Lumber Products from

                                   Canada, Case No. C-122-858: Initial

                                   Questionnaire Response," dated April 4,

                                   2017

April 4, 2017 JDIL Voluntary      Letter from the Department,

               Respondent          "Countervailing Duty Investigation of

               Memorandum          Certain Softwood Lumber Products from

                                   Canada: Whether to Select a Voluntary

                                   Respondent," dated April 4, 2017.

April 4, 2017 Voluntary           Department Memorandum, "Countervailing

               Respondent          Duty Investigation of Certain Softwood

               Selection           Lumber Products from Canada: Whether to

               Memorandum          Select a Voluntary Respondent," dated

                                   April 4, 2017

April 4, 2017 West Fraser Supp    Letter from the Department to West

               QNR 2               Fraser, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada: Non-Stumpage

                                   Programs - First Supplemental

                                   Questionnaire for West Fraser Mills

                                   Ltd.," dated April 4, 2017

April 5, 2017 Canfor Supp QNR 2 Letter from Canfor, "Certain Softwood

               Response            Lumber Products from Canada, Case No. C-

                                   122-858: Supplemental Cost Table

                                   Questionnaire Response," dated April 5,

                                   2017

April 5, 2017 GBC Rebuttal NFI    Letter from the GBC, "Certain Softwood

               Submission 1, Part Lumber Products from Canada: Government

               1                   of British Columbia Benchmark Rebuttal

                                   Information," dated April 5, 2017

April 5, 2017 GBC Rebuttal NFI    Letter from the GBC, "Certain Softwood

               Submission 1, Part Lumber Products from Canada: Comments in

               2                   Support of Clarifying and Exclusionary

                                   Language Proposed by Canada Regarding the

                                   Scope of these Investigations," dated

                                   April 5,2017

April 5, 2017 GBC Supp QNR 3      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Governments of

                                   Canada, British Columbia and New

                                   Brunswick," dated April 5, 2017

April 5, 2017 GNB Supp QNR 1      Letter from the Department, "Certain

                                   Softwood Lumber from Canada: Supplemental

                                   Questionnaire for the Governments of

                                   Canada, British Columbia and New

                                   Brunswick," dated April 5, 2017

April 5, 2017 GNS Supp QNR 2      Letter from the GNS, "Certain Softwood

               Response            Lumber Products from Canada: Response of

                                   the Government of Nova Scotia to the

                                   Department's Supplemental Questionnaire

                                   to the Government of Canada," dated April

                                   5, 2017

April 5, 2017 GOC Comments        Letter from the GOC, "Certain Softwood

               Remanufactured      Lumber from Canada: Request that

               Lumber              Remanufactured Lumber Be Treated as a

                                   Separate Class or Kind of Merchandise and

                                   That a Separate Rate Be Established for

                                   Independent Remanufacturers," dated April

                                   5, 2017

April 5, 2017 GOC Etal Supp QNR 3 Letter from the Department to the GOC,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire for the

                                   Governments of Canada, British Columbia

                                   and New Brunswick," dated April 5, 2017

April 5, 2017 GOQ NFI Submission, Letter from the GOQ, "Certain Softwood

               Refile Part 1       Lumber from Canada: Re-filing of back-up

                                   data sets and files to the expert report

                                   of Robert C. Marshall, Ph.D," dated April

                                   5,2017

April 5, 2017 GOQ NFI Submission, Letter from the GOQ, "Certain Softwood

               Refile Part 2       Lumber from Canada: Resubmission of .txt

                                   files from Re-filing of back-up data sets

                                   and files to the expert report of Robert

                                   C. Marshall, Ph.D," dated April 5, 2017

April 5, 2017 Tolko Rebuttal NFI Letter from Tolko," "Certain Softwood

               Submission 1        Lumber Products from Canada: Response to

                                   Petitioner Benchmark Information

                                   Submitted on March 27, 2017," dated April

                                   5, 2017

April 5, 2017 Tolko Supp QNR 1    Letter from Tolko, "Certain Softwood

               Response            Lumber Products from Canada: Cost Table

                                   Supplemental Response," dated April 5,

                                   2017

April 6, 2017 BCLTC Rebuttal NFI Letter from BCLTC, "Certain Softwood

               Submission          Lumber Products from Canada: Reply to

                                   Petitioner's Benchmark Submission and

                                   Comments on Initial Questionnaire

                                   Responses," dated April 6, 2017

April 6, 2017 Canfor Rebuttal NFI Letter from Canfor, "Certain Softwood

               Submission 2        Lumber Products from Canada, Case No. C-

                                   122-858: Rebuttal Benchmark Factual

                                   Information," dated April 6, 2017

April 6, 2017 GBC Supp QNR 1      Letter from GBC, "Certain Softwood Lumber

               Response            Products from Canada: Government of

                                   British Columbia Supplemental Stumpage

                                   Response to Department's March 30, 2017

                                   Supp QNR," dated April 6, 2017

April 6, 2017 GNS Rebuttal NFI    Letter from the GNS, "Certain Softwood

               Submission 1        Lumber Products from Canada: Rebuttal

                                   Factual Information Submission of the

                                   Government of Nova Scotia in Response to

                                   Resolute's New Factual Information,"

                                   dated April 6, 2017

April 6, 2017 GOA Rebuttal NFI    Letter from the GOA, "Certain Softwood

               Submission 1, Part Lumber Products from Canada: Submission

               1                   of Factual Information to Rebut, Clarify,

                                   or Correct Factual Information Contained

                                   in Petitioner's March 27, 2017 Filing of

                                   Factual Information to Measure Adequacy

                                   of Remuneration pursuant to 19 CFR

                                   351.301(c)(3)(iv)," dated April 6, 2017

April 6, 2017 GOC Etal Comments Letter from the GOC, "Certain Softwood

               Rebuttal to         Lumber from Canada: Reply of the

               Petitioner Primary Government of Canada and the Government

               QNR Response        of British Columbia to Petitioner's

               Comments            Rebuttal to the Initial Questionnaire

                                   Response," dated April 6, 2017

April 6, 2017 OCFP Comments -     Letter from OCFP, "Oregon-Canadian Forest

               Scope 2             Products Response to Coalition Additional

                                   Comments on Scope, April 3, 2017," dated

                                   April 6, 2017

April 6, 2017 Resolute Supp QNR 5 Letter from Resolute, "Softwood Lumber

               Response            from Canada: Resolute's Response to the

                                   Second Supplemental Questionnaire on Non-

                                   Stumpage Programs," dated April 6, 2017

April 6, 2017 West Fraser Supp    Letter from the Department to West

               QNR 2, Addendum     Fraser, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada: Addendum to First

                                   Supplemental Questionnaire for West

                                   Fraser Mills Ltd.," dated April 6, 2017

April 7, 2017 Canfor Revised      Letter from Canfor, "Certain Softwood

               Sales Information Lumber Products from Canada, Case No. C-

                                   122-858: Revised Public Version of

                                   Exhibit 25," dated April 7, 2017

April 7, 2017 GNS Rebuttal NFI    Letter from the GNS, "Certain Softwood

               Submission 2        Lumber Products from Canada: Submission

                                   of Factual Information to Rebut, Clarify

                                   and Correct Comments Filed by the

                                   Governments of Alberta, British Columbia,

                                   Manitoba, Ontario and Quebec," dated

                                   April 7, 2017

April 7, 2017 GOC Etal Supp QNR 1 Letter from the GOC et. al., "Certain

               Response            Softwood Lumber from Canada: Response of

                                   the Government of Canada and the

                                   Governments of Manitoba, Ontario, Quebec,

                                   and Saskatchewan to the Department's

                                   March 27, 2017 Supplemental

                                   Questionnaire," dated April 7, 2017

April 7, 2017 GOM Supp QNR 1      Letter from the GOQ, "Certain Softwood                Response            Lumber from Canada: Response of the

                                   Government of Canada and the Governments

                                   of Manitoba, Ontario, Quebec, and

                                   Saskatchewan to the Department's March

                                   27, 2017 Supplemental Questionnaire,"

                                   April 7, 2017

April 7, 2017 GOO Supp QNR 1      Letter from the GOO, "Response Of The

               Response            Government Of Ontario To The Department's

                                   March 27, 2017 Supplemental

                                   Questionnaire," dated April 7, 2017

April 7, 2017 GOQ Supp QNR 1      Letter from the GOQ, "Certain Softwood

               Response            Lumber from Canada: Response of the

                                   Government of Canada and the Governments

                                   of Manitoba, Ontario, Quebec, and

                                   Saskatchewan to the Department's March

                                   27, 2017 Supplemental Questionnaire,"

                                   dated April 7, 2017

April 7, 2017 GOS Supp QNR 1      Letter from the GOQ, "Certain Softwood

               Response            Lumber from Canada: Response of the

                                   Government of Canada and the Governments

                                   of Manitoba, Ontario, Quebec, and

                                   Saskatchewan to the Department's March

                                   27, 2017 Supplemental Questionnaire,"

                                   dated April 7, 2017

April 7, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               Denominator         Lumber Products from Canada: Deficiencies

                                   in Respondent Information Regarding

                                   Stumpage Subsidy Denominator," dated

                                   April 7, 2017

               Petitioner Comments Letter from Petitioner, "Certain Softwood

April 7, 2017 - Stumpage          Lumber Products from Canada: Deficiencies

               Denominator         in Respondent Information Regarding

                                   Stumpage Subsidy Denominator," dated

                                   April 7, 2017

April 7, 2017 Petitioner Request Letter from Petitioner, "Certain Softwood

               - Additional NFI    Lumber Products from Canada: Request for

               Scope               Leave to Submit New Factual Information

                                   Regarding the Scope of the

                                   Investigation," dated April 7, 2017

April 7, 2017 Request for Sales Department Memorandum, "Countervailing

               Information         Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Request for

                                   Publicly-Ranged Data," dated April 7,

                                   2017

April 7, 2017 Resolute Supp QNR 7 Letter from Resolute, "Softwood Lumber

               Response            from Canada: Resolute's Response to the

                                   Department's Addendum to the Second

                                   Supplemental Non-Stumpage Questionnaire,"

                                   dated April 7, 2017

April 10, 2017 Ex-Parte Meeting    Department Memorandum, "Petition for the

               Atlantic Canada     Imposition of Antidumping Duties on

                                   Imports of Certain Softwood Lumber

                                   Products from Canada: Consultation

                                   Documents," dated April 10, 2017

April 10, 2017 Resolute Rejection Letter from Resolute, "Softwood Lumber

               Request             from Canada: Resolute's Request that the

                                   Department Reject the Rebuttal Factual

                                   Information Submission of the Government

                                   of Nova Scotia as Nonconforming," dated

                                   April 10, 2017

April 11, 2017 Canfor Pre-Prelim Letter from Canfor, "Certain Softwood

               Comments            Lumber Products from Canada, Case No. C-

                                   122-858: Pre-Preliminary Comments," dated

                                   April 11, 2017

April 11, 2017 GBC Comments Pre- Letter from the GBC, "Certain Softwood

               Preli               Lumber Products from Canada: Comments for

                                   the Preliminary Determination of

                                   Investigation," dated April 11,2017

April 11, 2017 GBC Supp QNR 2      Letter from the GBC," Certain Softwood

               Response            Lumber from Canada: Response of the

                                   Government ofBritish Columbia and Partial

                                   Response of the Government of Alberta to

                                   the Department's March 27, 2017

                                   Supplemental Questionnaire," dated April

                                   11,2017

April 11, 2017 GOA Request         Department Memorandum, "Countervailing

               Corrections         Duty Investigation -Certain Softwood

                                   Lumber Products from Canada: New Factual

                                   Information Submission," dated April 11,

                                   2017

April 11, 2017 GOA Supp QNR 1      Letter from the GOA," Certain Softwood

               Response, Part 1    Lumber from Canada: Response of the

                                   Government of British Columbia and

                                   Partial Response of the Government of

                                   Alberta to the Department's March 27,

                                   2017 Supplemental Questionnaire," dated

                                   April 11, 2017

April 11, 2017 GOC Etal Comments Letter from GOC Etal, "Countervailing

               GNS Data 2          Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Comments

                                   from the Governments of Alberta, British

                                   Columbia, Manitoba, Ontario, Quebec and

                                   Saskatchewan on the Government of Nova

                                   Scotia's April 3, 2017 Questionnaire

                                   Response," dated April 11,2017

April 11, 2017 GOM Comments Pre- Letter from the GOM, "Softwood Lumber

               Prelim              from Canada - Comments by the Government

                                   of Manitoba for the Preliminary

                                   Determination," dated April 11,2017

April 11, 2017 GOO Comments Pre- Letter from the GOO, "Countervailing Duty

               Prelim              Investigation of Certain Softwood Lumber

                                   Products from Canada: Government of

                                   Ontario Comments for the Preliminary

                                   Determination," dated April 11,2017

April 11, 2017 GOQ NFI Submission, Department Memorandum, "Countervailing

               DOC Request for     Duty Investigation -Certain Softwood

               Clarification       Lumber Products from Canada: New Factual

                                   Information Submission," dated April 11,

                                   2017

April 11, 2017 GOS Comments Pre- Letter from the GOS, "Softwood Lumber

               Prelim              from Canada - Comments by the Government

                                   of Saskatchewan for the Preliminary

                                   Determination," dated April 11,2017

April 11, 2017 JDIL Comments Pre- Letter from JDIL, "Certain Softwood

               Prelim              Lumber Products from Canada: Pre-

                                   Preliminary Determination Comments,"

                                   dated April 11, 2017

April 11, 2017 JDIL Sales          Letter from JDIL, "Certain Softwood

               Information 1       Lumber Products from Canada: Request for

                                   Publicly-Ranged Data," dated April

                                   11,2017

April 11, 2017 Petitioner Pre-     Letter from Petitioner, "Certain Softwood

               Prelim Comments 1 Lumber Products from Canada: Pre-

                                   Preliminary Comments," dated April 11,

                                   2017

April 11, 2017 Petitioner Pre-     Letter from Petitioner, "Certain Softwood

               Prelim Comments 2 Lumber Products from Canada: Pre-Prelim

                                   Comments on Non-Stumpage Subsidy

                                   Programs," dated April 11, 2017

April 11, 2017 Petitioner Rebuttal Letter from Petitioner, "Certain Softwood

               Comments-           Lumber Products from Canada: Response to

               Remanufactured      GOC Request Regarding 'Remanufactured'

               Lumber              Lumber," dated April 11,2017

April 11, 2017 Tolko Comments Pre- Letter from Tolko, "Tolko Pre-Preliminary

               Prelim              Determination Comments," dated April 11,

                                   2017

April 11, 2017 Tolko DOC Request Department Memorandum, "Department

               for Corrections     Memorandum, "Countervailing Duty

                                   Investigation - Certain Softwood Lumber

                                   Products from Canada: New Factual

                                   Information Submission," dated April 11,

                                   2017

April 11, 2017 Tolko Sales         Letter from Tolko, "Certain Softwood

               Information         Lumber Products from Canada: Tolko's

                                   Publicly-Ranged Export Sales Data," dated

                                   April 11, 2017

April 12, 2017 Atlantic Canada     Department Memorandum, "Antidumping and

               Allow Additional    Countervailing Duty Investigations of

               NFI                 Certain Softwood Lumber Products from

                                   Canada - Response to April 10, 2017,

                                   Request for Leave to Submit New Factual

                                   Information," dated April 12, 2017

April 12, 2017 GBC Supp QNR 3      Letter from GBC, "Certain Softwood Lumber

               Response            from Canada: Response of the Government

                                   of Canada and the Government of British

                                   Columbia to the Department's April 5,

                                   2017 Supplemental Questionnaire," dated

                                   April 12, 2017

April 12, 2017 GNB Supp QNR 1      Letter from the GNB, "Response of the

               Response            Government of New Brunswick to the

                                   Department's April 5, 2017 Supplemental

                                   Questionnaire Certain Softwood Lumber

                                   Products from Canada," dated April 12,

                                   2017

April 12, 2017 GOC Etal Supp QNR 3 Letter from the GOC et. al., "Certain

               Response            Softwood Lumber from Canada: Response of

                                   the Government of Canada and the

                                   Government of British Columbia to the

                                   Department's April 5,2017 Supplemental

                                   Questionnaire,"" dated April 12, 2017

April 12, 2017 GOQ NFI Submission, Letter from the GOQ, "Certain Softwood

               Clarification       Lumber from Canada: Response to the

                                   Department's request for a written

                                   explanation identifying the relevant

                                   subsection(s) of 19 CFR 351.102(b)(21)

                                   applicable to our March 27, 2017 filing,"

                                   dated April 12, 2017

April 12, 2017 Petitioner Request Letter from Petitioner, "Certain Softwood

               Alignment           Lumber Products from Canada: Request for

                                   Alignment of the Countervailing Duty

                                   Final Determination with the Companion

                                   Antidumping Duty Final Determination,"

                                   dated April 12,2017 April 12,2017

                                   Resolute Supp QNR 6 Response Letter from

                                   Resolute, "Softwood Lumber from Canada:

                                   Resolute's Response to the First

                                   Supplemental Questionnaire on Stumpage

                                   Programs," dated April 12, 2017

April 13, 2017 GOC Etal Comments Letter from the GOC, "Certain Softwood

               Pre-Prelim          Lumber Products from Canada: Government

                                   of Canada Pre-Preliminary Determination

                                   Comments," dated April 13,2017

April 13, 2017 GOC Etal Primary    Letter from the GOC et. al., "Certain

               QNR Response,       Softwood Lumber Products from Canada:

               Errata 3            Submission of Factual Information in

                                   Errata to the Response of the Government

                                   of Canada and the Governments of Alberta,

                                   British Columbia, and Ontario to the

                                   Department's January 19,2017 Initial

                                   Questionnaire," dated April 13,2017

April 13, 2017 GOQ Comments Pre- Letter from the GOQ, "Certain Softwood

               Prelim              Lumber from Canada: Comments of the

                                   Government of Quebec for the Preliminary

                                   Determination," dated April 13,2017

April 13, 2017 JDIL Rebuttal NFI Letter from JDIL, "Certain Softwood

               Submission 1 GNS    Lumber Products from Canada: Factual

               Data                Information Submitted to Rebut, Clarify,

                                   or Correct Questionnaire Response," dated

                                   April 13, 2017

April 13, 2017 Preliminary         Department Memorandum, "Calculations for

               Critical            Preliminary Determination of Critical

               Circumstances       Circumstances in the Countervailing Duty

               Calculation         Investigation of Certain Softwood Lumber

               Memorandum          Products from Canada," dated April 13,

                                   2017

April 13, 2017 Request for         Letter from the Department to

               Additional Sales    respondents, "Countervailing Duty

               Information         Investigation of Certain Softwood Lumber

                                   Products from Canada: Request for

                                   Respondents to Submit Additional Sales

                                   Data," dated April 13, 2017.

April 13, 2017 Resolute Primary    Letter from Resolute, Part II for

               QNR, Part 2,        Stumpage programs, "Softwood Lumber from

               Correction          Canada: Replacement to Exhibit Submitted

                                   in Initial Questionnaire Response on

                                   Stumpage Programs," dated April 13, 2017

April 13, 2017 Resolute Rebuttal Letter from Resolute, "Softwood Lumber

               NFI Submission 1    from Canada: Resolute's Response to The

                                   Government of Nova Scotia's April 5, 2017

                                   Supplemental Questionnaire Response,"

                                   dated April 13,2017

April 13, 2017 Tolko NFI           Letter from Tolko, "Certain Softwood

               Submission          Lumber Products from Canada: March 27,

               Corrections         2017 Factual Information Submission

                                   Clarification," dated April 13,2017

April 13, 2017 West Fraser NFI     Letter from West Fraser, "Certain

               Submission          Softwood Lumber Products from Canada,

               Clarification       Case No. C-122-858: Additional

                                   Explanation Regarding March 27, 2017

                                   Submission of Additional Factual

                                   Information," dated April 13, 2017

April 14, 2017 Canfor Supp QNR 3 Letter from Canfor, "Certain Softwood

               Response            Lumber Products from Canada, Case No. C-

                                   122-858: Response to April4, 2017

                                   Supplemental Questionnaire," dated April

                                   14, 2017

April 14, 2017 GOA Comments Pre- Letter from the GOA, "Certain Softwood

               Prelim              Lumber Products from Canada: Pre-

                                   Preliminary Determination Comments by the

                                   Government of Alberta," dated April 14,

                                   2017

April 14, 2017 GOA Supp QNR 1      Letter from the GOA, "Certain Softwood

               Response, Part 2    Lumber from Canada: Partial Response of

                                   the Government of Alberta to the

                                   Department's March 27, 2017 Supplemental

                                   Questionnaire," dated April 14, 2017

April 14, 2017 GOC Etal Supp QNR 2 Letter from the GOC et. al., "Certain

               Response            Softwood Lumber from Canada: Response of

                                   the Government of Canada and the

                                   Governments of Alberta and British

                                   Columbia to the Department's April 3,2017

                                   Supplemental Questionnaire," dated April

                                   14, 2017

April 14, 2017 JDIL Shipment Data3 Letter from JDIL, "Certain Softwood

                                   Lumber Products from Canada," dated April

                                   14, 2017

April 14, 2017 West Fraser         Letter from West Fraser, "Certain

               Shipment Data3      Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Response to the

                                   Department's Request for Monthly Quantity

                                   and Value Shipment Data," dated April 14,

                                   2017

April 16, 2017 Petitioner NFI      Letter from Petitioner, "Certain Softwood

               Submission 2        Lumber Products from Canada: New Factual

                                   Information Regarding ALB-Certified

                                   Lumber," dated April 16, 2017

April 16, 2017 West Fraser Supp    Letter from West Fraser, "Certain

               QNR 2 Response      Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Response to

                                   Department's April 5, 2017 Countervailing

                                   Duty Supplemental Questionnaire," dated

                                   April 16, 2017

April 17, 2017 Canfor Shipment     Letter from Canfor, "Certain Softwood

               Data 3              Lumber Products from Canada, Case No. C-

                                   122-858: Quantity and Value Shipment

                                   Data for January 2015 - March 2017,"

                                   dated April 17, 2017

April 17, 2017 JDIL Sales          Letter from JDIL, "Certain Softwood

               Information 2       Lumber Products from Canada: Additional

                                   Sales Data," dated April 17, 2017

April 17, 2017 Resolute Shipment Letter from Resolute, "Softwood Lumber

               Data3               from Canada: Resolute's Updated Response

                                   to Critical Circumstances Questionnaire,"

                                   dated April 17, 2017

April 17, 2017 Tolko Sales         Letter from Tolko, "Certain Softwood

               Information 2       Lumber Products from Canada: Affiliated

                                   Party Submission," dated April 17, 2017

April 17, 2017 Tolko Shipment      Letter from Tolko, "Certain Softwood

               Data3               Lumber Products from Canada: Response to

                                   Department's Request for Monthly Sales

                                   Data, Inclusive of March 2017," dated

                                   April 17, 2017

April 17, 2017 West Fraser         Letter from West Fraser, "Certain

               Comments Pre-Prelim Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Additional

                                   Explanation Regarding March 27, 2017

                                   Submission of Additional Factual

                                   Information," dated April 17, 2017

April 17, 2017 West Fraser Sales Letter from West Fraser, "Certain

               Information         Softwood Lumber Products from Canada,

                                   Case No. C-122-858: Information Regarding

                                   Co-Products and By-Products Produced in

                                   Sawmills," dated April 17, 2017

April 18, 2017 Resolute Additional Letter from Resolute, "Softwood Lumber

               Sales Information from Canada: Response To Request For

                                   Respondents To Submit Additional Sales

                                   Data Regarding Co-products/Bv-products,"

                                   dated April 18, 2017

April 19, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               Critical            Lumber Products from Canada: Comments on

               Circumstances 1     Respondents' Critical Circumstances

                                   Responses," dated April 19, 2017

April 20, 2017 GOC Comments        Letter from the GOC, "Countervailing Duty

               Critical            and Antidumping Duty Investigations of

               Circumstances       Certain Softwood Lumber Products from

               Responses Rebuttal Canada: Rebuttal Comments on Petitioner's

                                   Comments on Respondents' Critical

                                   Circumstances Responses," dated April 20,

                                   2017

April 20, 2017 GOC Rebuttal        Letter from the GOC, "Certain Softwood

               Comments Company    Lumber from Canada: Reply to Petitioner's

               Exclusions          Response to the Government of Canada's

                                   Proposal for Company Exclusions," dated

                                   April 20, 2017

April 24, 2017 British Columbia    Department Memorandum, "Analysis of Top

               Diameter Analysis and Butt Diameter Data Provided in

                                   Exhibit BC-S-164 of the Initial Question

                                   of the Government of British Columbia,"

                                   April 24, 2017

April 24, 2017 Canfor Preliminary Department Memorandum, "Preliminary

               Calculation         Determination Calculations for Canfor,"

               Memorandum          dated April 24, 2017

April 24, 2017 CEP Analysis Memo Department Memorandum, "Consultation for

                                   Employment Program," dated April 24, 2017

April 24, 2017 JDIL Preliminary    Department's Memorandum, "Preliminary

               Calculation         Determination in the Countervailing Duty

               Memorandum          Investigation of Softwood Lumber from

                                   Canada: Preliminary Determination

                                   Calculations for J.D. Irving Limited,"

                                   dated April 24, 2017

April 24, 2017 Lumber IV Profit    Department Memorandum, "Profit Data from

               Data                Lumber IV," dated April 24, 2017

April 24, 2017 Market Memorandum Department Memorandum to the File,

                                   "Provincial Market Preliminary Analysis

                                   Memorandum," dated April 24, 2017.

April 24, 2017 Nova Scotia         Department Memorandum, "Benchmark

               Preliminary         Calculation Memorandum for the

               Benchmark           Preliminary Determination," dated April

               Calculation         24, 2017

               Memorandum

April 24, 2017 Preliminary All     Department Memorandum, "Calculation of

               Others Rate Calc    the "All-Others" Rate in the Preliminary

               Memo                Determination of the Countervailing Duty

                                   Investigation of Softwood Lumber Products

                                   from Canada," dated April 24, 2017

April 24, 2017 Resolute Joint      Department Memorandum, "Resolute Company

               Ventures Memorandum Affiliation: Joint Ventures," dated April

                                   24, 2017

April 24, 2017 Resolute            Department Memorandum, "Preliminary

               Preliminary         Determination Calculations the Resolute

               Calculation         FP Canada Inc.," dated April 24, 2017

               Memorandum

April 24, 2017 Tolko Preliminary Department Memorandum, "Countervailing

               Calculation         Duty Investigation of Certain Softwood

               Memorandum          Lumber Products from Canada - Tolko

                                   Marketing & Sales Ltd.," dated April 24,

                                   2017

April 24, 2017 U.S. Log Price      Department Memorandum, "Washington

               Memorandum          Department of Natural Resources Delivered

                                   Log prices for 2015," dated April 24,

                                   2017

April 24, 2017 USFS 2009 Sawmill Department Memorandum, "Placement on

               Profile Memorandum Record of Investigation - United States

                                   Forestry Service Report, "Profile 2009:

                                   Softwood Sawmills in the United States

                                   and Canada," dated April 24, 2017

April 24, 2017 West Fraser         Department Memorandum, "Preliminary

               Preliminary         Determination of the Countervailing Duty

               Calculation         Investigation on Softwood Lumber Products

               Memorandum          from Canada: Preliminary Determination

                                   Calculations for West Fraser Mills, Ltd.

                                   and its cross-owned affiliates," dated

                                   April 24, 2017

April 24, 2017 PDM                 Memorandum to Ronald K. Lorentzen, Acting

                                   Assistant Secretary, "Decision Memorandum

                                   for the Preliminary Determination in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated April 24, 2017

April 25, 2017 Company Exclusion Department Memorandum, "Countervailing

               Memorandum          Duty Investigation of Softwood Lumber

                                   Products from Canada: Company

                                   Exclusions," dated April 25, 2017

April 27, 2017 Petitioner Scope    Letter from Petitioner, "Certain Softwood

               Clarification on    Lumber Products from Canada:

               U.S. Lumber         Clarification Regarding U.S. Origin

                                   Lumber Undergoing Certain Types of

                                   Processing in Canada," dated April 27,

                                   2017

April 28, 2017 Preliminary         Certain Softwood Lumber Products From

               Determination       Canada: Preliminary Affirmative

                                   Countervailing Duty Determination, and

                                   Alignment of Final Determination With

                                   Final Antidumping Duty Determination, 82

                                   FR 19657 (April 28, 2017)

May 1, 2017     GOC Etal            Letter from the GOC, "Countervailing Duty

               Ministerial Error and Antidumping Duty Investigations of

               Comments            Certain Softwood Lumber Products from

                                   Canada: Comments Regarding Ministerial

                                   Errors and Submission of New Factual

                                   Information Concerning the Department's

                                   Preliminary Affirmative Critical

                                   Circumstances Determination," dated May

                                   1, 2017

May 1, 2017     DIL Ministerial     Letter from JDIL, "Certain Softwood

               Error Comments      Lumber Products from Canada: Ministerial

                                   Error Comments," dated May 1,2017

May 2, 2017     Oregon Industrial Letter from Oregon Industrial,

               Scope Comments      "Independent Comments on the Scope,"

                                   dated May 2, 2017

May 3, 2017     GNS Comments Scope Letter from GNS, "Certain Softwood Lumber

               2                   from Canada: Scope Comments from the

                                   Government of Nova Scotia," dated May

                                   3,2017

May 5, 2017     Barrette & ISPA     Letter from Barrette, "Scope Comments for

               Comments Scope      Crating Ladder Components Exclusion,"

                                   dated May 5, 2017

May 5, 2017     Barrette, EACOM,    Letter from Barrette, "Scope Comments for

               ISPA Comments Scope Bed-Frame Components Exclusion," dated

                                   May 5,2017

May 5, 2017     Canfor Comments     Letter from Canfor, "Certain Softwood

               Scope 3             Lumber Products from Canada. C No.C-122-

                                   858: Comment son Proposed Scope

                                   Exclusions," dated May 5, 2017

May 5, 2017     CIFQ Comments Scope Letter from CIFQ, "Countervailing and

               4                   Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language -1-

                                   Joists," dated May 5, 2017

May 5, 2017     CIFQ Comments Scope Letter from CIFQ, "Countervailing and

               5                   Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language -Lumber

                                   Made From U.S. Origin Logs," dated May

                                   5,2017

May 5, 2017     CIFQ Comments Scope Letter from CIFQ, "Countervailing and

               6                   Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language - U.S.

                                   Origin Lumber Further Processed in

                                   Canada," dated May 5, 2017

May 5, 2017     GBC Comments Scope Letter from GBC, "Certain Softwood Lumber

               3                   Products from Canada: Scope Comments of

                                   the Government of British Columbia,"

                                   dated May 5, 2017

May 5, 2017     GNS Comments Scope Letter from GNS, "Certain Softwood Lumber

               3                   from Canada: Scope Comments Requesting

                                   the Exclusion from the Antidumping and

                                   Countervailing Duty Investigations of

                                   ALB-Certified Softwood Lumber Products,"

                                   dated May 5, 2017

May 5, 2017     GOC Comments Scope Letter from the GOC, "Certain Softwood

               3                   Lumber Products from Canada: Comments on

                                   Proposed Scope Exclusions Currently under

                                   Consideration by the Department," dated

                                   May 5,2017

May 5, 2017     IWPA Scope Comments Letter from IWPA, "Canadian Softwood

                                   Lumber Exclusion Request by Oregon-Canada

                                   Forest Products Dear Secretary," dated

                                   May 5,2017

May 5, 2017     Matra Scope         Letter from Matra, "Independent Comments

               Comments            on Scope," dated May 5, 2017

May 5, 2017     OCFP Comments -     Letter from OCFP, "Comments on OCFP's

               Scope 3             Proposed Scope Exclusion Request

                                   Currently Under Consideration by the

                                   Department," dated May 5, 2017

May 5, 2017     OFIA Scope Comments Letter from OFIA, "Countervailing and

                                   Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language -Eastern

                                   White Pine," dated May 5, 2017

May 5, 2017     Petitioner          Letter from Petitioner, "Certain Softwood

               Amendment to the    Lumber Products from Canada: Amendment to

               Petition            the Petitions," dated May 5,2017

May 5, 2017     Petitioner          Letter from Petitioner, "Certain Softwood

               Ministerial Error Lumber Products from Canada: Response to

               Rebuttal Comments Requests for Correction of Alleged

                                   Critical Circumstances Ministerial

                                   Errors," dated May 5, 2017

May 5, 2017     Petitioner          Letter from Petitioner, "Certain Softwood

               Ministerial Error Lumber Products from Canada: Response to

               Rebuttal Comments Requests for Correction of Alleged

                                   Critical Circumstances Ministerial

                                   Errors," dated May 5,2017

May 5, 2017     Petitioner Scope    Letter from Petitioner, "Certain Softwood

               Comments 2          Lumber Products from Canada: Comments on

                                   Proposed Scope Exclusions," dated May 5,

                                   2017

May 5, 2017     Resolute Scope      Letter from Resolute, "Countervailing and

               Comments            Antidumping Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada: Proposed Scope Language -Bedframe

                                   Components," dated May 5, 2017

May 5, 2017     RI1A Comments Scope Letter from RILA, "Certain Softwood

               3                   Lumber Products from Canada: RILA Scope

                                   Comments," dated May 5, 2017

May 5, 2017     Terminal Comments Letter from Terminal, "A-122-857/C-122-

               Scope 3             858: Certain Softwood Lumber Products

                                   from Canada: Additional Comments on

                                   Scope- Edge Glued Lumber," dated May

                                   5,2017

May 5, 2017     UFP Comments Scope Letter from UFP, "Certain Softwood Lumber

               2                   Products from Canada: Comments on

                                   Proposed Scope Exclusion for Bed

                                   Frame/Box Spring Components Submitted by

                                   UFP Western Division, Inc. and UFP

                                   Eastern Division Inc.," dated May 5, 2017

May 5, 2017     WFA Scope Comments Letter from WFA, "Certain Softwood Lumber

               1                   from Canada: Comments Regarding Proposed

                                   Exclusion of Certain Western Red Cedar

                                   Products," dated May 5,2017

May 5, 2017     WFA Scope Comments Letter from WFA, "Certain Softwood Lumber

               2                   from Canada: Comments Regarding Proposed

                                   Exclusion of Certain Yellow Cedar

                                   Products," dated May 5, 2017.

May 8, 2017     GNS Supp QNR 3      Letter from the Department to the GNS,

                                   "Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada:

                                   Supplemental Questionnaire," dated May 8,

                                   2017

May 8, 2017     Primary QNR -       Department Memorandum, "Countervailing

               Correction 2        Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Standard

                                   Questions Appendix - Provision of

                                   Stumpage for LTAR," dated March 8, 2017

May 11, 2017    Canfor Supp QNR 4 Letter from the Department to Canfor,

                                   "Certain Softwood Lumber Products from

                                   Canada, Case No. C-122-858: Supplemental

                                   Questionnaire," dated May 11,2017

May 11, 2017    GBC Supp QNR 4      Letter from the Department to the GBC,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products From

                                   Canada: Second Supplemental Questionnaire

                                   for the Government of British Columbia,"

                                   dated May 11, 2017

May 11, 2017    JDIL Supp QNR 1     Letter from the Department to JDIL,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire," dated May

                                   11,2017

May 11, 2017    Tolko Supp QNR 2    Letter from the Department to Tolko,

                                   "Certain Softwood Lumber from Canada:

                                   Supplemental Questionnaire for Tolko,"

                                   dated May 11,2017

May 11, 2017    West Fraser Supp    Letter from the Department to West

               QNR 3               Fraser, "Supplemental Questionnaire for

                                   West Fraser Mills Ltd. (West Fraser),"

                                   dated May 11,2017

May 12, 2017    GNB Supp QNR 2      Letter from the Department to the GNB,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Supplemental Questionnaire for

                                   the Government of New Brunswick," dated

                                   May 12, 2017

May 12, 2017    GOA Supp QNR 2      Letter from the Department to the GOA,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Supplemental Questionnaire for

                                   the Government of Alberta," dated May 12,

                                   2017

May 15, 2017    GOA Supp QNR 2      Letter from the Department to the GOA,

               Addendum            "Addendum to May 12, 2017 Supplemental

                                   Questionnaire for the Government of

                                   Alberta," dated May 15, 2017

May 15, 2017    Petitioner Comments Letter from Petitioner, "Certain Softwood

               Critical            Lumber Products from Canada: Treatment of

               Circumstances 3     March 2, 2017 Response to Government of

                                   Canada's Comments on Allegations of

                                   Critical Circumstances," dated May

                                   15,2017

May 16, 2017    GOO Supp QNR 2      Letter from the Department to the GOO,

                                   "Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada:

                                   Post-Preliminary Supplemental

                                   Questionnaire," dated May 16, 2017

May 16, 2017    GOQ Supp QNR 2      Letter from the Department to the GOQ,

                                   "Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada:

                                   Post-Preliminary Supplemental

                                   Questionnaire," dated May 16, 2017

May 17, 2017    Canfor Supp QNR 4 Letter from the Department to Canfor,

               Addendum            "Certain Softwood Lumber from Canada:

                                   Addendum to Supplemental Questionnaire

                                   for Canfor Corporation," dated May 17,

                                   2017

May 17, 2017    Tolko Supp QNR 2    Letter from the Department to Tolko,"

               Addendum            Certain Softwood Lumber from Canada:

                                   Addendum to Supplemental Questionnaire

                                   for Tolko Marketing and Sales Ltd. and

                                   Tolko Industries Ltd.," dated May 17,

                                   2017

May 18, 2017    Petitioner Supp QNR Letter from Department, "Supplemental

               3                   Questionnaire Regarding Scope of

                                   Investigation," dated May 18, 2017

May 18, 2017    Petitioner Supp QNR Letter from the Department to Petitioner,

               4                   "Supplemental Scope Questions," dated May

                                   18, 2017

May 18, 2017    Resolute Supp QNR 8 Letter from the Department to Resolute,

                                   "Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada:

                                   Post-Preliminary Supplemental

                                   Questionnaire," dated May 18, 2017

               GNS Supp QNR 3      Letter from the GNS, "Certain Softwood

May 22, 2017    Response            Lumber Products from Canada: Response of

                                   the Government of Nova Scotia to the

                                   Department's Second Supplemental

                                   Questionnaire," dated May 22, 2017

May 22, 2017    GNS Supp QNR 3      Letter from the GNS, "Certain Softwood

               Response, Errata    Lumber Products from Canada: Errata to

                                   the May 22, 20f7 Response of the

                                   Government ofNova Scotia," dated May 22,

                                   2017

May 23, 2017    Resolute NFI        Letter from the Department to Resolute,

               Rejection Letter    "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada - Rejection of Untimely Filed New

                                   Factual Information," dated May 23, 2017.

May 24, 2017    Petitioner Supp QNR Letter from Petitioner, "Certain Softwood

               3 Response          Lumber Products from Canada: Response to

                                   Scope Comments Supplemental

                                   Questionnaire," dated May 24, 2017

May 24, 2017    Petitioner Supp QNR Letter from Petitioner, "Certain Softwood

               4 Response          Lumber Products from Canada: Response to

                                   Scope Comments Supplemental

                                   Questionnaire," dated May 24, 2017

May 25, 2017    GOC Etal Comments Letter from GOC Etal, "Countervailing

               GNS Data 3          Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Comments on

                                   Deficiencies in the Government of Nova

                                   Scotia's Questionnaire Responses," dated

                                   May25,2017

May 26, 2017    GOC Etal Hearing    Letter from GOC and Canadian Provincial

               Request             Governments, "Countervailing Duty

                                   Investigation of Certain Softwood Lumber

                                   Products from Canada: Request for

                                   Hearing," dated May 26, 2017

May 29, 2017    GOO Supp QNR 2      Letter from the GOO, "Countervailing Duty

               Response            Investigation of Softwood Lumber Products

                                   from Canada; Response to the Post-

                                   Preliminary Supplemental Questionnaire,"

                                   dated May 29, 2017

May 30, 2017    Canfor Hearing      Letter from Canfor, "Certain Softwood

               Request             Lumber Products from Canada: Hearing

                                   Request," dated May 30, 2017

May 30, 2017    GBC Supp QNR 4      Letter from the GBC, "Certain Softwood

               Response            Lumber Products from Canada: Government

                                   of British Columbia Supplemental

                                   Questionnaire Response," dated May 30,

                                   2017

May 30, 2017    GNS Hearing Request Letter from GNS, "Certain Softwood Lumber

                                   Products from Canada: Hearing Request,"

                                   dated May 30, 2017

May 30, 2017    GOA Supp QNR 2      Letter from GOA, "Certain Softwood Lumber

               Response            Products from Canada: Response of the

                                   Government of Alberta to the Department's

                                   May 12, 2017 Supplemental Questionnaire

                                   and May 15, 2017 Addendum," dated May

                                   30,2017

May 30, 2017    JDIL Hearing        Letter from JDIL, "Certain Softwood

               Request             Lumber Products from Canada: Hearing

                                   Request," dated May 30, 2017

May 30, 2017    JDIL NFI Rejection Letter from the Department to JDIL,

               Letter              "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada - Rejection of Untimely Filed New

                                   Factual Information," dated May 30, 2017.

May 30, 2017    Petitioner Hearing Letter from Petitioner, "Certain Softwood

               Request             Lumber Products from Canada: Request for

                                   a Hearing," dated May 30, 2017

May 30, 2017    Petitioner Hearing Letter from Petitioner, "Hearing

               Request             Request," dated May 30, 2017

May 30, 2017    Petitioner Pre-     Letter from Petitioner, "Certain Softwood

               Verification GOO    Lumber Products from Canada: Comments

               Comments            Regarding the Upcoming Verification for

                                   the Government of Ontario," dated May 30,

                                   2017

May 30, 2017    Resolute CIFQ, and Letter from Resolute, CIFQ, and OFIA,

               OFIA Hearing        "Countervailing Duty Investigation of

               Request             Certain Softwood Lumber Products from

                                   Canada: Resolute's Request for Hearing,"

                                   dated May 30, 2017

May 30, 2017    RILA Hearing        Letter from RILA, "Certain Softwood

               Request             Lumber Products from Canada: Hearing

                                   Request," dated May 30, 2017

May 30, 2017    Tolko Hearing       Letter from Tolko, "Certain Softwood

               Request             Lumber Products from Canada: Hearing

                                   Request," dated May 30, 2017

May 30, 2017    Tolko Supp QNR 2    Letter from Tolko, "Certain Softwood

               Response, Part 1    Lumber Products from Canada: Response to

                                   the Department's CVD Supplemental

                                   Questionnaire," dated May 30, 2017

May 31, 2017    Canfor Supp QNR 4 Letter from Canfor, "Certain Softwood

               Response            Lumber Products from Canada, Case No. C-

                                   122-858: Supplemental Questionnaire

                                   Response," dated May 31, 2017

May 31, 2017    GOO Verification    Letter from the Department, "Verification

               Outline             of the Government of Ontario's

                                   Questionnaire Responses submitted in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated May 31, 2017

May 31, 2017    JDIL Rebuttal NFI Letter from JDIL, "Certain Softwood

               Submission 2 GNS    Lumber Products from Canada: Factual

               Data                Information Submitted to Rebut, Clarify,

                                   or Correct Questionnaire Response," dated

                                   May 31,2017

May 31, 2017    West Fraser Supp    Letter from West Fraser, "Certain

               QNR 3 Response      Softwood Lumber Products from Canada:

                                   Response to Second Supplemental," dated

                                   May 31,2017

June 2, 2017    GNB Supp QNR 2      Letter from GNB, "Resubmission of the

               Response            GNB's Response to the Department's May

                                   12, 2017 Supplemental Questionnaire,"

                                   dated June 2, 2017

June 2, 2017    GOQ Supp QNR 2      Letter from GOQ, "Certain Softwood Lumber

               Response            from Canada: Response of The Government

                                   of Quebec to the Department's May 16,

                                   2017 Supplemental Questionnaire," dated

                                   June 2, 2017

June 2, 2017    JDIL Supp QNR 1     Letter from JDIL, "Certain Softwood

               Response            Lumber Products from Canada," dated June

                                   2, 2017

June 2, 2017    Tolko Supp QNR 2    Letter from Tolko, "Certain Softwood

               Response, Part 2    Lumber Products from Canada: Response to

                                   the Department's Request for Additional

                                   Grade Data," dated June 2, 2017

June 5, 2017    Canfor Verification Letter from Department to Canfor,

               Outline             "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada; Verification of Canfor

                                   Corporation's Questionnaire Responses,"

                                   dated June 5, 2017

June 5, 2017    GOC Rebuttal        Letter from GOC, "Certain Softwood Lumber

               Information RE      Products from Canada: Government of

               Petitioner Scope    Canada's Comments on Petitioner's

               Filing              Response to Scope Comments Supplemental

                                   Questionnaire," dated June 5,2017

June 5, 2017    JDIL Rebuttal NFI Letter from JDIL, "Certain Softwood

               Submission 3        Lumber Products from Canada: Factual

                                   Information Submitted to Rebut

                                   Questionnaire Response," dated June 5,

                                   2017

June 5, 2017    Resolute Supp QNR 8 Letter from Resolute, "Softwood Lumber

               Response            from Canada: Resolute's Response to the

                                   Department's Mav 18th Post-Preliminary

                                   Supplemental Questionnaire," dated June

                                   5,2017

June 5, 2017    Tolko Verification Letter from the Department,

               Outline             "Countervailing Duty Investigation of

                                   Certain Softwood Lumber from Canada:

                                   Tolko Verification Agenda," dated June 5,

                                   2017

June 5, 2017    West Fraser         Letter from the Department,

               Verification        "Countervailing Duty Investigation of

               Outline             Certain Softwood Lumber Products from

                                   Canada; Verification of West Fraser Mills

                                   Ltd.'s Questionnaire Responses," dated

                                   June 5, 2017

June 5, 2017    Woodtone Rebuttal Letter from Woodtone, "Comments on

               Information RE      Petitioner's Supplemental Questionnaire

               Petitioner Scope    Response," dated June 5, 2017

               Filing

June 6, 2017    JDIL Verification Letter from the Department,

               Outline             "Countervailing Duty Investigation of

                                   Certain Softwood Lumber from Canada;

                                   Verification of J.D. Irving, Limited's

                                   Questionnaire Responses," dated June 6,

                                   2017

June 6, 2017    Resolute Rebuttal Letter from Resolute, "Countervailing

               NFI Submission 2    Outv Investigation of Certain Softwood

                                   Lumber Products from Canada: Resolute's

                                   Supplemental Response Regarding Wood

                                   Pellet Sales To Ontario Power

                                   Generation," dated June 6, 2017

June 7, 2017    GBC Verification    Letter from the Department, "Verification

               Outline             of Government of British Columbia

                                   Questionnaire Responses submitted in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 8, 2017

June 8, 2017    GNB Verification    Letter from the Department, "Verification

               Outline             of Government of New Brunswick

                                   Questionnaire Responses submitted in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 8, 2017

June 8, 2017    GOA Verification    Letter from the Department, "Verification

               Outline             of Government of Alberta Questionnaire

                                   Responses submitted in the Countervailing

                                   Duty Investigation of Certain Softwood

                                   Lumber Products from Canada," dated June

                                   8, 2017

June 12, 2017 GNS Verification    Letter from the Department, "Verification

               Outline             of Government of Nova Scotia's

                                   Questionnaire Responses submitted in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 12, 2017

June 12, 2017 GOA Comments GNS    Letter from GOA, "Countervailing Duty

               Verification        Investigation of Certain Softwood Lumber

                                   Products from Canada: Comments on

                                   Verification of Government of Nova

                                   Scotia's 2015 Private Stumpage Survey,"

                                   dated June 12, 2017

June 12, 2017 GOQ Verification    Letter from the Department, "Verification

               Outline             of the Government of Quebec's

                                   Questionnaire Responses Submitted in the

                                   Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 12, 2017

June 13, 2017 Petitioner Pre-     Letterfrom Petitioners, "Certain Softwood

               Verification GBC    Lumber Products from Canada: Comments

               Comments            Regarding the Upcoming Verification for

                                   the Government of British Columbia,"

                                   dated May 30, 2017

June 13, 2017 Petitioner Scope    Letter from Petitioner, "Certain Softwood

               Comments 3          Lumber Products from Canada: Additional

                                   Proposed Scope Exclusions," dated June

                                   13,2017

June 14, 2017 New Aid Package     Memorandum to the File, "Countervailing

               Memorandum          Duty Investigation of Softwood Lumber

                                   Products from Canada," dated June 14,

                                   2017

June 16, 2017 Resolute            Letter from the Department,

               Verification        "Countervailing Duty Investigation of

               Outline             Certain Softwood Lumber Products from

                                   Canada; Verification of Resolute FP

                                   Canada Inc.'s Questionnaire Responses,"

                                   dated June 16, 2017

June 17, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               GOC Etal QNR        Lumber Products from Canada: Comments on

               Response Aid        the Government of Canada's Supplemental

                                   Questionnaire Response Regarding Its Aid

                                   Package to Softwood Lumber Producers,"

                                   dated July 17, 2017

June 19, 2017 Twin Rivers         Letter from Twin Rivers, "Certain

               Comments on         Softwood Lumber Products from Canada:

               Petition Amendment Comments on Proposed Petition Amendment,"

                                   dated June 19, 2017

June 20, 2017 GOA Minor           Letter from GOA, "Certain Softwood Lumber

               Corrections         Products from Canada: Minor Corrections

                                   Presented at the Government of Alberta's

                                   Verification," dated June 20, 2017

June 20, 2017 GOC Etal Supp QNR 4 Letter from the Department,

                                   "Countervailing Duties on Imports of

                                   Certain Softwood Lumber Products from

                                   Canada: Questions Regarding the

                                   Government of Canada's Funding," dated

                                   June 19, 2017

June 22, 2017 GOC Etal Comments Letter from GOC, "Countervailing Duty

               Objection to Supp Investigation of Certain Softwood Lumber

               QNR 4               Products from Canada: Objection to

                                   Department's June 20, 2017 Supplemental

                                   Questionnaire," dated June 22, 2017

June 23, 2017 ALB Scope           Department Memorandum, "Preliminary

               Memorandum          Decision Memorandum for Exclusion of

                                   Certain Softwood Lumber Products

                                   Certified by the Atlantic Lumber Board in

                                   the Less-Than-Fair-Value and

                                   Countervailing Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 23, 2017

June 23, 2017 Canfor Revised      Letter from Canfor, "Certain Softwood

               Stumpage Databases Lumber Products from Canada: Submission

                                   of Revised Alberta and British Columbia

                                   Stumpage Databases," dated June 23,2017

June 23, 2017 Canfor Verification Letter from Canfor, "Certain Softwood

               Exhibits            Lumber Products from Canada Case No. C-

                                   122-858: Canfor's Verification Exhibits,"

                                   dated June 23, 2017

June 23, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               GOC Aid 1           Lumber Products from Canada:

                                   Clarification Information Regarding

                                   Government of Canada's Aid Package to

                                   Softwood Lumber Producers," dated June

                                   23,2017

June 23, 2017 Preliminary         Department Memorandum, "Preliminary

               Exclusion           Decision Memorandum for Exclusion of

               Memorandum          Certain Softwood Lumber Products

                                   Certified By the Atlantic Lumber Board in

                                   the Less-Than-Fair-Value and

                                   Countervailing Duty Investigations of

                                   Certain Softwood Lumber Products from

                                   Canada," dated June 23, 2017

June 23, 2017 Preliminary Scope Department Memorandum, "Certain Softwood

               Memorandum          Lumber Products from Canada: Preliminary

                                   Scope Decision," dated June 23,2017

July 4, 2017    SBCA Scope Comments Letter from SBCA, "June 23, 2017

                                   Memorandum on Preliminary Scope Decisions

                                   - Comments from SBCA as Interested

                                   Party," dated July 4, 2017

July 5, 2017    Proposed Exclusion Department Memorandum, "Telephone

               Language Call Memo Conversation Regarding Proposed Exclusion

                                   Language," dated July 5, 2017.

July 7, 2017    GOC Etal Supp QNR 4 Letter from GOC, "Certain Softwood Lumber

               Response            from Canada: Response of the Government

                                   of Canada to the June 20, 2017

                                   Supplemental Questionnaire," dated July

                                   7, 2017

July 10, 2017 JDIL Minor          Letter from JDIL, "Softwood Lumber

               Corrections         Products from Canada: Excel Files for

               Submission          Minor Corrections," dated July 10, 2017

July 11, 2017 GNS Verification    Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - GNS

                                   Verification Report," dated July 11,2017

July 13, 2017 Tolko Revised Data Letter from Tolko, "Certain Softwood

               Response            Lumber Products from Canada: Submission

                                   of Revised Data Incorporating Minor

                                   Corrections and Clarifications," dated

                                   July 13,2017.

July 14, 2017 Canfor Verification Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - Canfor

                                   Verification Report," dated July 14, 2017

July 14, 2017 GBC Verification    Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - GBC

                                   Verification Report," dated July 14, 2017

July 14, 2017 GOO Verification    Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - GOO

                                   Verification Report," dated July 14, 2017

July 14, 2017 GOQ Verification    Department Memorandum, "Verification of

               Report              the Questionnaire Responses of the

                                   Government of Quebec," dated July 14,

                                   2017

July 14, 2017 GOQ Verification    Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - GOQ

                                   Verification Report," dated July 14, 2017

July 14, 2017 Tolko Verification Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - Tolko

                                   Verification Report," dated July 14, 2017

July 14, 2017 West Fraser         Department Memorandum, "Countervailing

               Verification Report Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - West Fraser

                                   Verification Report," dated July 14, 2017

July 17, 2017 GNB Verification    Department Memorandum, "Verification of

               Report              the Questionnaire Responses of the

                                   Government of the Province of New

                                   Brunswick," dated July 17, 2017

July 17, 2017 GOA Verification    Department Memorandum, "Verification of

               Report              the Questionnaire Responses of the

                                   Government of Alberta," dated July 17,

                                   2017

July 17, 2017 GOQ Verification    Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - GOQ

                                   Verification Report," dated July 14, 2017

July 17, 2017 JDIL Verification Department Memorandum, "Countervailing

               Report              Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - JDIL

                                   Verification Report," dated July 14, 2017

July 17, 2017 Petitioner Comments Letter from Petitioner, "Certain Softwood

               GOC Aid 2           Lumber Products from Canada: Comments on

                                   the Government of Canada's Supplemental

                                   Questionnaire Response Regarding Its Aid

                                   Package to Softwood Lumber Producers,"

                                   dated July 17, 2017

July 18, 2017 Resolute            Department Memorandum, "Verification of

               Verification Report the Questionnaire Responses of Resolute

                                   FP Canada Inc.," dated July 18, 2017

July 18, 2017 Resolute            Department Memorandum, "Countervailing

               Verification Report Duty Investigation of Certain Softwood

                                   Lumber Products from Canada - Resolute

                                   Verification Report," dated July 18, 2017

July 25, 2017 OCFP Case Brief     Letter from OCFP, "Certain Softwood

                                   Lumber Products from Canada: Case "Brief

                                   of Oregon-Canadian Forest Products Inc.,"

                                   dated July 25, 2017

July 26, 2017 GTA Data Additional Department Memorandum, "Certain Softwood

               Data                Lumber Products from Canada: Case "Brief

                                   of Oregon-Canadian Forest Products Inc.,"

                                   dated July 26, 2017

July 27, 2017 Canfor Case Brief Letter from Canfor, "Certain Softwood

                                   Lumber Products from Canada, Case No. C-

                                   122-858: Case Brief," dated July 27, 2017

July 27, 2017 Central Canada      Letter from Central Canada Alliance,

               Alliance Case Brief "Softwood Lumber from Canada: Central

                                   Canada's Case Brief," dated July 27, 2017

July 27, 2017 GBC Case Brief      Letter from GBC Etal, Volume 5,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief - GBC/BCLTC," dated July

                                   27, 2017

July 27, 2017 GBC Case Brief Log Letter from GBC Etal, Volume 3,

               Exports             "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief - GOC/GBC Log Export

                                   Ban," dated July 27, 2017

July 27, 2017 GNB Case Brief      Letter from GNB, "GNB's Case Brief

                                   Certain Softwood Lumber Products from

                                   Canada," dated July 27, 2017

July 27, 2017 GOA Case Brief      Letter from GOA/ Etal, Volume 4,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief - GOA/Albert Softwood

                                   Lumber Trade Counsel," dated July 27,

                                   2017

July 27, 2017 GOC Case Brief      Letter from GOC Etal, Volume 2,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief," dated July 27, 2017

July 27, 2017 GOC Etal Common     Letter from GOC Etal, Volume 1,

               Issues Case Brief "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief - GOC Brief," dated July

                                   27, 2017

July 27, 2017 GOM Case Brief      Letter from GOM, Volume 6,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Government Parties'

                                   Joint Case Brief - GOM," dated July 27,

                                   2017

July 27, 2017 GOO Case Brief      Letter from GOO, Volume 7,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Parties' Joint Case

                                   Brief - GOO," dated July 27, 2017

July 27, 2017 GOQ Case Brief      Letter from GOQ, Volume 8,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Parties' Joint Case

                                   Brief - GOO," dated July 27, 2017

July 27, 2017 GOS Case Brief      Letter from GOS, Volume 9,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Parties' Joint Case

                                   Brief - GOS," dated July 27, 2017

July 27, 2017 JDIL Case Brief     Letter from JDIL, "Softwood Lumber

                                   Products from Canada: Case Brief," dated

                                   July 27, 2017

July 27, 2017 Petitioner Case     Letter from Petitioner, "Certain Softwood

               Brief               Lumber Products from Canada: Case Brief,"

                                   dated July 27, 2017

July 27, 2017 Resolute Case Brief Letter from Resolute, "Softwood Lumber

                                   from Canada: Resolute's Case Brief,"

                                   dated July 27, 2017

July 27, 2017 Tolko Case Brief    Letter from Tolko, "Certain Softwood

                                   Lumber Products from Canada: Tolko CVD

                                   Affirmative Case Brief," dated July 27,

                                   2017

July 27, 2017 West Fraser Case    Letter from West Fraser, "Certain

               Brief               Softwood Lumber Products from Canada:

                                   Case Brief of West Fraser Mills Ltd.,"

                                   dated July 27, 2017

July 31, 2017 GOC Etal Comments Letter from GOC Etal, "Countervailing

               GTA Data            Duty and Antidumping Duty Investigations

                                   of Certain Softwood Lumber Products from

                                   Canada: Factual Information to Rebut,

                                   Clarify, or Correct Data Placed on the

                                   Record by the Department," dated July 31,

                                   2017

August 4, 2017 Central Canada      Letter from Central Canada Alliance,

               Alliance Rebuttal "Softwood Lumber from Canada: Central

               Brief               Canada's Case Brief on Critical

                                   Circumstances" dated August 4, 2017

August 4, 2017 GBC Rebuttal Brief Letter from the GOC, Volume 3, "Canadian

                                   Parties Joint Rebuttal Brief," dated

                                   August 4, 2017

August 4, 2017 GNB Rebuttal Brief Letter from GNB, "GNB's Rebuttal Brief

                                   Certain Softwood Lumber Products from

                                   Canada," dated August 4, 2017

August 4, 2017 GNS Rebuttal Brief Letter from GNS, "Certain Softwood Lumber

                                   Products from Canada: Rebuttal Brief,"

                                   dated August 4, 2017

August 4, 2017 GOC Etal Common     Letter from the GOC, Volume 1, "Canadian

               Issues Rebuttal     Parties Joint Rebuttal Brief," dated

               Brief               August 4, 2017

August 4, 2017 GOC Rebuttal Brief Letter from the GOC, Volume 2, "Canadian

                                   Parties Joint Rebuttal Brief," dated

                                   August 4, 2017

August 4, 2017 GOO Rebuttal Brief Letter from the GOC, Volume 4, "Canadian

                                   Parties Joint Rebuttal Brief," dated

                                   August 4, 2017

August 4, 2017 GOQ Rebuttal Brief Letter from GOQ, Volume 5,

                                   "Countervailing Duty Investigation of

                                   Certain Softwood Lumber Products from

                                   Canada: Canadian Parties' Joint Rebuttal

                                   Brief - GOQ," dated August 4, 2017

August 4, 2017 JDIL Rebuttal Brief Letter from JDIL, "Softwood Lumber

                                   Products from Canada: Rebuttal Brief,"

                                   dated August 4, 2017

August 4, 2017 Resolute Rebuttal Letter from Resolute, "Softwood Lumber

               Brief               from Canada: Resolute's Rebuttal Brief,"

                                   dated August 4, 2017

August 4, 2017 GOC Miscellaneous Letter from GOC, "Antidumping Duty

               Scope Comments      Investigation of Certain Softwood Lumber

                                   GOC Miscellaneous Scope Comments Products

                                   from Canada: Scope Comments of Government

                                   of British Columbia Filed in

                                   Countervailing Duty Investigation of

                                   Softwood Lumber Products from Canada,"

                                   dated August 4, 2017

August 4, 2017 West Fraser         Letter from West Fraser, "Certain

               Rebuttal Brief      Softwood Lumber Products from Canada:

                                   Rebuttal Brief of West Fraser Mills

                                   Ltd.," dated August 4, 2017

August 7, 2017 NBLP Scope Brief    Letter from NBLP, "Certain Softwood

                                   Lumber from Canada: NBLP Case Brief on

                                   Scope Issues," dated August 7, 2017

August 7, 2017 Barrette Wood and Letter from Barrette Wood, Inc. and EACOM

               EACOM Scope Brief Timber Corporation, "Softwood Lumber from

                                   Canada: Case Brief - Scope Issues," dated

                                   August 7, 2017

August 7, 2017 Canfor Scope Brief Letter from Canfor, "Certain Softwood

                                   Lumber Products from Canada. Case Nos. A-

                                   122-857. C-122-158: Case Brief on Scope-

                                   Related Matters," dated August 7, 2017

August 7, 2017 GNB Scope Case      Letter from GNB, "GNB's Scope Case Brief

               Brief               Certain Softwood Lumber Products from

                                   Canada," dated August 7, 2017

August 7, 2017 GNS Scope Brief     Letter from GNS, "Certain Softwood Lumber

                                   Products from Canada: Case Brief

                                   Concerning Product Scope Issues," dated

                                   August 7, 2017

August 7, 2017 JDIL Scope Brief    Letter from J.D. Irving, "Softwood Lumber

                                   from Canada: Scope Comments," dated

                                   August 7, 2017

August 7, 2017 Central Canada      Letter from Central Canada, "Softwood

               Scope Brief         Lumber from Canada: Central Canada's Case

                                   Brief On Scope Issues," dated August 7,

                                   2017

August 7, 2017 NAFP Scope Brief    Letter from NAFP, "Certain Softwood

                                   Lumber from Canada; Scope Brief of North

                                   America Forest Products Ltd.," dated

                                   August 7, 2017

August 7, 2017 OCFP Scope Brief    See Letter from OCFP, "Certain Softwood

                                   Lumber Products from Canada (Case No. A-

                                   122-857): Case Brief of Oregon-Canadian

                                   Forest Products, Inc. on Scope Issues,"

                                   dated August 7, 2017

August 7, 2017 Petitioner Rebuttal Letter from the petitioner, "Certain

               Brief               Softwood Lumber Products from Canada:

                                   Rebuttal Brief," dated August 7, 2017

August 7, 2017 RILA Scope Brief    Letter from RILA, "Certain Softwood

                                   Lumber Products from Canada: RILA Case

                                   Brief on Scope Issues," dated August 7,

                                   2017

August 7, 2017 Woodtone Scope      Letter from Woodtone, "Certain Softwood

               Brief               Lumber from Canada; Scope Brief of W.I.

                                   Woodtone, Inc. U.S. Origin Wood Subject

                                   to Minor Processing," dated August 7,

                                   2017

August 7, 2017 Woodtone/Maibec     Letter from Wood one and Maibec, "Certain

               Scope Brief         Softwood Lumber from Canada; Scope Brief

                                   of Woodtone and Maibec," dated August 7,

                                   2017

August 7, 2017 Canadian Parties    Letter from GOC, "Antidumping Duty

               Joint Scope Brief Investigation of Certain Softwood Lumber

                                   Products from Canada: Canadian Parties'

                                   Joint Case Brief on Scope," dated August

                                   7, 2017

August 11, 2017 Update to HTS       Department Memorandum, "Softwood Lumber

               Numbers Memorandum from Canada: HTS Numbers," dated August

                                   11,2017

August 14, 2017 Central Canada      Letter from Central Canada, "Softwood

               Scope Rebuttal      Lumber from Canada: Central Canada's

                                   Rebuttal Brief On Scope Issues," dated

                                   August 14, 2017

August 14, 2017 IKEA Scope Rebuttal Letter from IKEA, "Certain Softwood

                                   Lumber Products from Canada: IKEA

                                   Rebuttal Brief on Scope Issues," dated

                                   August 14, 2017

August 14, 2017 Petitioner Scope    Letter from the petitioner, "Certain

               Rebuttal            Softwood Lumber Products from Canada:

                                   Scope Rebuttal Comments," dated August

                                   14, 2017

August 14, 2017 RILA Scope Rebuttal Letter from RILA, "Certain Softwood                                    Lumber Products from Canada: RILA's

                                   Letter in lieu of Rebuttal Case Brief on

                                   Scope Issues," dated August 14, 2017

August 24, 2017 Hearing Transcript Department Memorandum, "Hearing

               Day 2               Transcript on CVD Issues," dated August

                                   24, 2017

August 25, 2017 UFP Scope Rebuttal Letter from UFP, "Certain Softwood Lumber

                                   Products from Canada: Refiling of

                                   Rebuttal Comments on Scope Bed Frame/Box

                                   Spring Components and Kits Submitted by

                                   UFP Western Division, Inc. and UFP

                                   Eastern Division Inc. (A-122-857; C-122-

                                   858)," dated August 25, 2017 (refiling

                                   UFP's August 14, 2017 scope comments at

                                   the direction of the Department)

August 29, 2017 Hearing Transcript Department Memorandum, "Hearing

               Day 1               Transcript on Scope Related Issues Only,"

                                   dated August 29, 2017

September 7,    GOC Etal Hearing    Letter from GOC Etal, "Countervailing

2017            Transcript Comments Duty Investigation of Certain Softwood

                                   Lumber Products from Canada: Corrections

                                   to Hearing Transcripts," dated September

                                   7, 2017

Dated           Alberta Final       Department Memorandum, "Final

concurrently    Market Memorandum Countervailing Duty Determination on

with this memo                      Certain Softwood Lumber Products from

                                   Canada: Alberta Stumpage Market

                                   Analysis," dated concurrently with this

                                   memo.

Dated           Canfor Final        Department Memorandum, "Final

concurrently    Calculation         Determination Calculations for Canfor,"

with this memo Memorandum          dated concurrently with this memo

Dated           Final Stumpage      Department Memorandum, "Final Stumpage

concurrently    Benchmark           Benchmark Calculation Memorandum," dated

with this memo Calculation         concurrently with this memo

               Memorandum

Dated           JDIL Final          Department's Memorandum, "Final

concurrently    Calculation         Determination Calculations for J.D.

with this memo Memorandum          Irving Limited," dated concurrently with

                                   this memo

Dated           Nova Scotia         Department Memorandum, "Nova Scotia

concurrently    Benchmark           Benchmark Calculation Memorandum for the

with this memo Calculation         Final Determination," dated concurrently

               Memorandum          with this memo

Dated           Quebec Final Market Department Memorandum, "Quebec Market

concurrently    Memorandum          Analysis Memorandum for Final

with this memo                      Determination," dated concurrently with

                                   this memo

Dated           Resolute Final      Department Memorandum, "Final

concurrently    Calculation         Determination Calculations for Resolute

with this memo Memorandum          FP Canada Inc.," dated concurrently with

                                   this memo

Dated           Tolko Final         Department Memorandum, "Countervailing

concurrently    Calculation         Duty Investigation of Certain Softwood

with this memo Memorandum          Lumber Products from Canada for Tolko

                                   Marketing & Sales Ltd.," dated

                                   concurrently with this memo

Dated           West Fraser Final Department Memorandum, "Final

concurrently    Calculation         Determination Calculations for West

with this memo Memorandum          FraserMills, Ltd.," dated concurrently

                                   with this memo

APPENDIX II

Canfor

Programs Determined Not To Provide Countervailable Benefits to Canfor During the POI

Count         Title

1             Alberta Political Tax Contribution Credit

2             Alberta Tax-Exempt Fuel Program for Marked Fuel

3             BC Hydro Power Smart - Energy Studies and Audits Program

4             British Columbia Political Tax Contribution Credit

5             British Columbia Training Tax Credit

6             Forestry Innovation Investment Program

7             Fort St. John and BCTS Refunds

8             Greenhouse Carbon Tax Relief

9             Other Miscellaneous Payments from Alberta

10            Other Miscellaneous Payments from British Columbia

11            Property Tax Program for Private Forest Land

12            Revitalization Property Tax Exemption - Houston

13            Scientific Research and Experimental Development Tax Credit

             (British Columbia)

14            Unidentifiable Payments from the Federal Government

15            British Columbia Log Export Restraints

Programs Determined Not To Be Used by Canfor During the POI

Count         Title

1             Alberta's Tax Rebates for Clear Fuel

2             Apprenticeship Job Creation Tax Credit

3             BC Hydro Electricity Purchase Agreements

4             BC Hydro: Load Curtailment Program

5             Credits for the Construction and Major Repair of Access Roads

             and Bridges in Forest Areas

6             Export Development Canada: Export Guarantee Program

7             Federal Forestry Industry Transformation Program

8             Forest Industry Grants under the Forest Sector Prosperity Fund

9             Forest Innovation Program

10            Manitoba Stumpage

11            Motor Fuel Tax Refund for Off-Highway Purposes

12            New Brunswick License Management Fees

13            New Brunswick LIREPP

14            New Brunswick Provision of Silviculture Grants

15            New Brunswick Stumpage

16            Northern Industrial Electricity Rate Program

17            Ontario Stumpage

18            Property Tax Refund for Forest Producers on Private Woodlots in

             Quebec

19            Purchase of Electricity for MTAR under PAE 2011-01

20            Quebec Stumpage

21            Revitalization Property Tax Exemption - Mackenzie

22            Sales of Electricity to Alberta Energy Systems Operator

23            Saskatchewan Stumpage

24            Scientific Research and Experimental Development Tax Credit

             (Alberta)

25            Special Stumpage Arrangements Related to Non-Subject Merchandise

26            Sustainable Development Technology Canada

27            Tax Credits for Investments Relating to Manufacturing and

             Processing Equipment

28            Western Economic Diversification Canada - Western Development

             Program

29            Western Economic Diversification Canada - Western Innovation

             Initiative

30            Work Safe BC - Experience Rating System

JDIL

Programs Determined Not To Provide Countervailable Benefits to Irving During the POI

Count         Title

1             Apprenticeship Job Creation Tax Credit

2             Atlantic Canada Opportunities Agency - Business Development

             Program

3             Canada Summer Jobs Program

4             Efficiency New Brunswick Industrial Program

5             Efficiency Nova Scotia

6             High Energy Use Tax Rebate Grant

7             National Research Council Industrial Research Assistance Program

8             New Brunswick Climate Action Fund Grant

9             New Brunswick Forestry Industry Remission Program

10            Northern New Brunswick Economic Development and Innovation Fund

11            Nova Scotia Manufacturing and Processing Investment Credit

12            PNB Forest Workforce Training

13            Province of New Brunswick Financial Assistance to Industry

             Program Loan

Programs Determined Not To Be Used by Irving During the POI

Count         Title

1             Federal Forestry Industry Transformation Program

2             Sustainable Development Technology Canada

3             Forest Innovation Program

4             Export Development Corporation: Export Guarantee Program

5             Western Economic Diversification Canada - Western Development

             Program

6             Western Economic Diversification Canada - Western Innovation

             Initiative

7             Alberta Stumpage

8             Alberta Tax-Exempt Fuel Program for Marked Fuel

9             Alberta's Tax Rebates for Clear Fuel

10            BC Stumpage

11            Log Export Restraints

12            BC Hydro Power Smart Load Displacement Program

13            BC Hydro Electricity Purchase Agreements

14            Motor Fuel Tax refund for Off-Highway Purposes

15            Manitoba Stumpage

16            Ontario Stumpage

17            Northern Industrial Electricity Rate Program

18            Forest Industry Grants under the Forest Sector Prosperity Fund

19            Quebec Stumpage

20            Purchase of Electricity for MTAR under PAE 2011-01

21            Property Tax Refund for Forest Producers on Private Woodlands in

             Quebec

22            Tax Credits for Investments Relating to Manufacturing and

             Processing Equipment

23            Credits for the Constructions and Major Repair of Access Roads

             and Bridges in Forest Areas

24            Saskatchewan Stumpage

Resolute

Programs Determined Not To Provide Countervailable Benefits to Resolute During the POI

Count         Title

1             Aboriginal Programs

2             Cooperative Education Tax Credit

3             ecoEnergy Renewable Power

4             ecoPerformance

5             Forest Innovation Program

6             Formabois

7             Innovation and Development for the Region of Manicouagan

8             MFFP Educational Grant

9             OERD Programs

10            Quebec Financial Aid for the Development of Private Woodlots

11            Refund of Fuel Tax Paid on Fuel Used for Certain Purposes

12            Rexforet - Silviculture Works: Forest Camps

13            Rexforet - Silviculture Works: Road Maintenance

14            Tax Credits for Investments Relating to Manufacturing and

             Processing Equipment

15            Workforce Skills Development and Recognition Fund

16            Tax Incentives for Private Forest Producers - Property Tax

             Refund for Forest Producers on Private Woodlands in Quebec

Programs Determined Not To Be Used by Resolute During the POI

Count         Title

1             Alberta Tax Rebates for Clear Fuel

2             Alberta Tax-Exempt Fuel Program for Market Fuel

3             Apprenticeship Job Creation Tax Credit

4             BC Hydro's Electricity Purchase Agreements

5             BC Hydro's Power Smart Load Displacement Program

6             BC Log Export Restraints

7             BC Motor Fuel Tax Refund for Off-Highway Purposes

8             ecoEnergy Efficiency for Industry Program

9             Export Development Canada: Export Guarantee Program

10            Federal Logging Tax Credit

11            Federal Research Consortium

12            Grants Under the Federal Forestry Industry Transformation

             Program

13            IESO Industrial Electricity Incentives

14            New Brunswick License Management Fees

15            New Brunswick Provision of Silviculture Grants

16            New Brunswick's LIREPP

17            Ontario Loan Guarantees under the Forest Sector Loan Guarantee

             Program

18            Ontario Scientific Research and Development Tax Credit

19            Provision of Stumpage for LTAR by GOBC, GOA, GOS, GOM, and GNB

20            Quebec Logging Tax Credit

21            Regional Tax Credit Program for Job Creation in Quebec

22            Research Consortium Tax Credit

23            Scientific Research and Experimental Development Program

             (Quebec)

24            Scientific Research and Experimental Development Program

             (Federal)

25            Sustainable Development Technology Canada

26            Tax Holiday for Large Investment Projects

27            Tax Incentives for Private Forest Producers - Deduction

             ofTaxable Income for Forest Producers on Private Woodlands in

             Quebec

28            Western Economic Diversification: Western Diversification

             Program

29            Western Economic Diversification: Western Innovation Initiative

Tolko

Programs Determined Not To Provide Countervailable Benefits to Tolko During the POI

Count         Title

1             Alberta - Stumpage Overpayment Adjustment

2             Alberta - Bioenergy Commercialization and Market Development

             (BCMDP)

3             Alberta - Softwood Lumber Surge Export Tax Recapture

5             BC - Arrangement with Select Seed

6             BC - Employer Innovation Fund

7             BC - Greenhouse Carbon Tax Relief

8             BC - Managed Forest Lands

9             BC - Operational Tree Improvement

10            BC - Partial Recovery of Canadian Standards Association

             Qualification Expenses

11            BC - Payments for Aerial Inventory Photography (LIDAR)

12            BC - Payments for Fire Suppression Services

13            BC - Payments for Road Maintenance Activities

14            BC - Pitch Moth Pest Removal

15            BC - Port Authority Cost Reduction

16            BC - WCB Wage Loss Reimbursement

17            BC Hydro Power Smart: Energy Studies

18            BC Motor Fuel Refund for Off-Highway Purposes

19            BC Training Tax Credit

20            BCTS Security Deposit Refunds for Unsuccessful BCTS Bids

21            British Columbia Timber Sales (BCTS) Standing Timber Inventory

22            Canada BC Job

23            Federal Forestry Industry Transformation Program (IFIT)

24            Forest Genetics Alberta

25            Forest Innovation Program

26            GOC- NRCAN Energy Efficiency for Industry

27            Manitoba - Aerial Herbicide Spraying

28            Manitoba - Annual Fee for Usage (Grass River Bridge)

29            Manitoba - Asbestos Removal

30            Manitoba - Assistance Related to Winter Road Maintenance and

             Bridge Use

31            Manitoba - Hand Planting of Overwinter Seedlings

32            Manitoba - Herbicide Treatment

33            Manitoba - Payments Pursuant to Cost Sharing Arrangement

34            Manitoba - Planting and Landscaping

35            Manitoba - Settlement for Phase-Out of Commercial Logging in the

             Grass River Provincial Park

36            Manitoba - Silviculture Project

37            Manitoba - Satellite Imagery Cost Sharing

38            Manitoba Land Settlement for Removal of Commercial Logging Areas

39            Manitoba Paid Work Experience Tax Credit

40            Manitoba- PCB removal at Tolko's Kraft Paper Mill

41            Manitoba Pulp Seedling Rebate

42            Miscellaneous Payments from GBC

Programs Determined Not To Be Used by Tolko During the POI

Count         Title

1             Accelerated Capital Cost Allowance for Class 29 Assets

2             Alberta - Property Tax Assessment Adjustment

3             Alberta's Tax Rebates for Clear Fuel

4             Apprenticeship Job Creation Tax Credit

5             BC Hydro Power Smart: Load Curtailment

6             Blowdown Salvage Stumpage Credits - Saskatchewan

7             Export Development Canada: Export Guarantee Program

8             Forestry Industry Grants Under the Ontario Forest Sector

             Prosperity Fund

9             GNB - Provision of Stumpage for LTAR

10            GOM - Provision of Stumpage for LTAR

11            GOO - Provision of Stumpage for LTAR

12            GOQ - Credits for the Construction and Major Repair of Public

             Access Roads and Bridges in Forest Areas

13            GOQ - Tax Credits for Investments Relating to Manufacturing and

             Processing Equipment

14            GOQ - Tax Holiday for Large Investment Projects

15            GOQ -Provision of Stumpage for LTAR

16            GOQ Purchase of Electricity for MTAR under PAE 2011-01

17            GOS - Provision of Stumpage for LTAR

18            MB Hydro Load Displacement Credit

19            New Brunswick License Management Fees

20            New Brunswick Provision of Silviculture Grants

21            New Brunswick's LIREPP

22            Ontario Loan Guarantees Under the Forest Sector Loan Guarantee

             Program

23            Ontario's Northern Industrial Electricity Rate Program

24            Quebec Financial Aid for the Development of Private Woodlots

25            Regional Tax Credit Program for Job Creation in Quebec

26            Scientific Research & Experimental Development Tax Incentive

             Program - British Columbia

27            Scientific Research & Experimental Development Tax Incentive

             Program - Federal

28            Scientific Research & Experimental Development Tax Incentive

             Program -Saskatchewan

29            Sustainable Development Technology Canada (SDTC)

30            Tax Incentives for Private Forest Producers - Deduction of

             Taxable Income for Forest Producers on Private Woodlands in

             Quebec

31            Tax Incentives for Private Forest Producers - Property Tax

             Refund for Forest Producers on Private Woodlands in Quebec

32            Western Economic Diversification - Western Development Program

             (WDP)

33            Western Economic Diversification - Western Innovation Initiative

             (WINN)

West Fraser

Programs Determined Not To Provide Countervailable Benefits to West Fraser During the POI

Count         Title

1             Alberta Climate Change and Emissions Management Corporation

2             Alberta Innovates - Residual Biomass Estimate

3             Alberta Innovates - Training Grant

4             Alberta Innovates Biosolutions R&D Grant

5             BC Hydro Power Smart Load Displacement Program

6             BC Hydro Power Smart: Industrial Energy Manager Program

7             BC Hydro Power Smart: Energy Studies and Audits Program

8             BC Hydro Power Smart: Industrial Projects Incentives Program

9             BC Hydro Load Curtailment Program

10            Biorefining Commercialization and Market Development Program

11            British Columbia Training Tax Credit

12            Canada Alberta Job Grant

13            ecoENERGY Efficiency for Industry Program

14            Ecotrust Canada Eco-Energy Program

15            Federal Forestry Industry Transformation Program

16            Forest Resources and Planning Act Section 108 Payments

17            Miscellaneous Payments from the Ministry of Jobs, Tourism and

             Skills Training

18            Miscellaneous Payments: Wage Reimbursement - Quesnel

19            Miscellaneous Payments: Employee Training - Quesnel

20            Mountain Caribou Recovery Implementation Plan

21            Political Contribution Tax Credit

22            Property Taxation of Private Forest Land

23            Pulp and Paper Green Transformation Program

24            Revitalization Property Tax Exemption - Chetwynd

25            Sustainable Development Technology Canada

26            Water and Sewage Treatment Payments - Quesnel

27            Western Economic Diversification - Western Development Program

28            Western Economic Diversification - Community Adjustment Fund

Programs Determined Not To Be Used by West Fraser During the POI

Count         Title

1             Alberta's Tax Rebates for Clear Fuel

2             British Columbia Motor Fuel Tax Refund for Off-Highway Purposes

3             Credits for the Construction and Major Repair of Public Access

             Roads and Bridges in Forest Areas

4             Export Development Canada: Export Guarantee Program

5             Forest Innovation Program

6             Forestry Industry Grants under the Ontario Forest Sector

             Prosperity Fund (FSPF)

7             GOQ Purchase of Electricity for More Than Adequate Remuneration

             (MTAR) under PAE 2011-01

8             Grants Under the Federal Forestry Industry Transformation

             Program

9             New Brunswick License Management Fees

10            New Brunswick Provision of Silviculture Grants

11            New Brunswick's Large Industrial Renewable Energy Purchases

             Program (LIREPP)

12            Ontario Loan Guarantees under the Forest Sector Loan Guarantee

             Program (FSLGP)

13            Ontario's Northern Industrial Electricity Rate Program

14            Provision of Stumpage for LTAR by Government of Saskatchewan,

             Government of Manitoba, Government of New Brunswick, Government

             of Ontario, and Government of Quebec

15            Quebec Financial Aid for the Development of Private Woodlots

16            Regional Tax Credit Program for Job Creation in Quebec

17            Sustainable Development Technology Canada

18            Tax Credits for Investments Relating to Manufacturing and

             Processing Equipment

19            Tax Holiday for Large Investment Projects

20            Tax Incentives for Private Forest Producers - Deduction of

             Taxable Income for Forest Producers on Private Woodlands in

             Quebec

21            Tax Incentives for Private Forest Producers - Property Tax

             Refund for Forest Producers on Private Woodlands in Quebec

22            Western Economic Diversification - Western Innovation Initiative

             (WINN)

Programs Deferred Until a Subsequent Administrative Review

Federal Programs

Count         Title

1             Logging Income Tax Credit

2             EDC's Account Performance Security Guarantee

Alberta Programs

Count         Title

1             FRIAA - Community Reforestation Program

2             FRIAA n1610

3             Foothills Research Institute

4             Emissions Performance Credits and Emissions Offset Credits

5             Property Tax Abatements - Alberta Municipalities

6             Alberta Property Tax - Economic Obsolescence Allowance

7             Environmental Penalty Refund

8             Workers Compensation Board n1611

9             Water and Sewage Treatment Payments - Hinton

n1610 Including: Incidental Conifer Program, Fire Hazard Reduction and Forest Health Program, Fire Smart Program, Community Adjustment Fund Enhanced Community Reforestation Program, Community Reforestation Program, Forest Resource Improvement Program, Wildfire Reclamation Program, Mountain Pine Beetle Program, Mountain Pine Beetle Forest Rehabilitation Program, Forestry Worker Employment Program, FRIAA - FRIP - High Prairie Hybrid Poplar Plantation, Spruce Budworm Dues Repayment.

n1611 Including: Certificate of Recognition, and Surplus Distribution.

British Columbia Programs

Count         Title

1             LBIP: Current Reforestation Program

2             LBIP n1612

3             Miscellaneous Payments from the Ministry of Forests, Land &

             Natural Resources Operations

4             Work Safe BC Certificate of Recognition

5             Mountain Caribou Recovery Implementation Plan

6             BC Hydro Power Smart: Incentives Study

7             BCAA Property Tax Reductions Ministry of Forests, Lands and

             Natural Resource Operations BC Timber Sales payments to Tolko

8             Logging Income Tax Credit

9             Northern Development Initiative Trust Training Rebate Program

             Capital Investment and Training Rebate Program

10            Forest Resources and Planning Act Section 108 Payments

11            Tenure Take back Program

n1612 Including: Forest Health Program, Resource Inventory Program, Recreation Management Program, Habitat Restoration Program, Timber Supply Mitigation Program, Fish Passage Program, Wildlife Habitat Program, Miscellaneous Payments.

Manitoba Program

Count         Title

1             MB Hydro Power Smart Program

Nova Scotia Program

Count         Title

1             GNS Transactions with Resolute

Ontario Program

Count         Title

1             IESO Demand Response

Quebec Programs

Count         Title

1             Industrial Systems Program, Energy Efficiency Program - Hydro-

             Quebec

2             Interruptible Electricity Option - Hydro-Quebec

3             Refund of Fuel Tax Paid on Fuel Used for Stationary Purposes

4             Investment Program in Public Forests Affected by Natural or

             Anthropogenic Disturbance

5             Research Consortium Tax Credit

**Dates**

**DATES:** *Applicable:* November 8, 2017.

**Contacts**

**FOR FURTHER INFORMATION CONTACT:** Lana Nigro (Tolko), Toby Vandall (Canfor), Justin Neuman (JDIL), Patricia Tran (West Fraser), and Kristen Johnson (Resolute), AD/CVD Operations, Offices I and III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-1779, (202) 482-1664, (202) 482-0486, (202) 482-1503, and (202) 482-4793, respectively.

FEDERAL REGISTER

**End of Document**